DOCUMENT RESUME

ED 458 016 PS 029 862

AUTHOR Naqvi, Yasmin
TITLE Rights of the Child in Turkey.
INSTITUTION World Organisation Against Torture (OMCT), Geneva (Switzerland).
ISBN ISBN-2-88477-001-1
PUB DATE 2001-00-00
NOTE 88p.; Report presented to the Committee on the Rights of the Child (27th Session, Geneva, Switzerland, May 21-June 8, 2001). For other reports in the Rights of the Child series, see PS 029 860-861. Supported by Misereor and the Fondation de France.
AVAILABLE FROM World Organisation Against Torture (OMCT), P.O. Box 21-8, rue du Vieux-Billard, CH 1211 Geneva 8, Switzerland. Tel: +4122-809-49-39; Fax: +4122-809-49-29; e-mail: omct@omct.org; Web site: http://www.omct.org.
PUB TYPE Reports - Descriptive (141) -- Reports - Evaluative (142) -- Speeches/Meeting Papers (150)
EDRS PRICE MF01/PC04 Plus Postage.
DESCRIPTORS Child Abuse; Child Advocacy; Child Safety; *Child Welfare; Childhood Needs; *Children; *Childrens Rights; Civil Rights Legislation; Compliance (Legal); Females; Foreign Countries; Government Role; Juvenile Justice; Law Enforcement; Refugees; Sexual Abuse; Social Discrimination; Violence; Well Being
IDENTIFIERS Torture; Torture Victims; *Turkey; *United Nations Convention on Rights of the Child; Victimization

ABSTRACT

This report to the United Nations Convention on the Rights of the Child contains observations of the World Organisation Against Torture (OMCT) concerning the application of the Convention by Turkey and observations regarding violence against girls in Turkey. The report is presented in three major parts. Part 1 asserts that despite the considerable legal framework for protecting children's rights, there is adequate proof that there are serious deficiencies in Turkey's system of child protection. Observations and recommendations are made in the following areas: (1) definition of a child; (2) torture and other cruel, inhuman, or degrading treatment or punishment; and (3) children in conflict with the law. This part concludes with recommendations related to the discrimination of Kurdish children and girls, treatment of refugee children, torture, and the juvenile justice system. Part 2 focuses on violence against girls in Turkey. This second part details problems related to domestic violence, marital rape, crimes committed against females in the name of "honor," virginity testing, sexual violence, prostitution and trafficking in girls, and state-perpetrated violence against girls. This part concludes with recommendations related to each of the problems discussed. Part 3 provides a summary of observations and recommendations by the U.N. Committee on the Rights of the Child--Turkey, including those related to difficulties in implementation the Convention; civil rights and freedoms; family environment and alternative care; basic health and welfare; education, leisure, and cultural activities; and special protection measures. (KB)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 458 016

PS 029862

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY

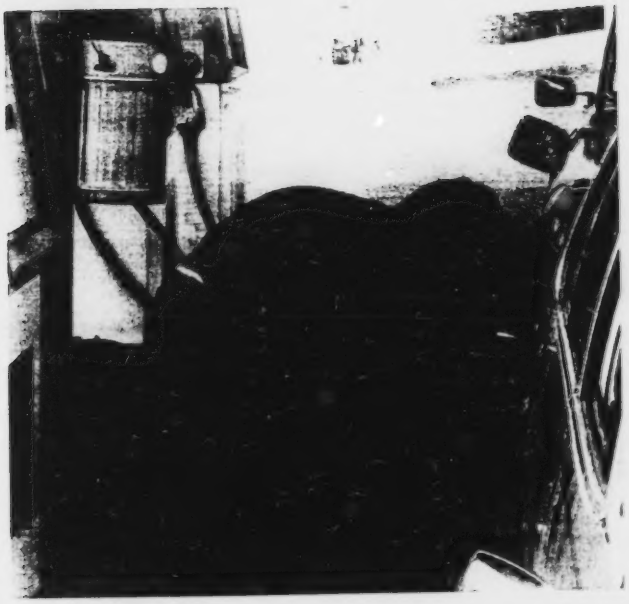
ERIC Sottas

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

OMCI

OPERATING THE [illegible] NETWORK

BEST COPY AVAILABLE



Rights of the Child in Turkey

OMC

OPERATING THE SOS-TORTURE NETWORK

The aim of OMCT country reports are to prevent torture

In its reports on children's rights, OMCT aims to analyse national law in terms of the international commitments that a government has made. For example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child who use them to analyse how well a country is fulfilling its international commitments with regards to children. Their recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

ISBN 2-88477-001-1

Summary

1. PRELIMINARY OBSERVATIONS 7
2. GENERAL OBSERVATIONS ON THE SITUATION OF CHILDREN 10
   2.1 DISCRIMINATION 11
   2.2 REFUGEE CHILDREN 13
3. DEFINITION OF THE CHILD 14
4. PROTECTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT 14
   4.1 TURKEY'S LEGAL FRAMEWORK 14
   4.2 PRACTICE 15
   4.3 CASES OF TORTURE 17
   4.4 CASES OF UNLAWFUL KILLING 20
5. CHILDREN IN CONFLICT WITH THE LAW 21
   5.1 AGE OF CRIMINAL RESPONSIBILITY 21
   5.2 POLICE CUSTODY 21
   5.3 REGULAR MEDICAL EXAMINATIONS 25
   5.4 CHILDREN'S COURTS 27
   5.5 PRE TRIAL DETENTION 28
   5.6 CONDITION OF PRISONS AND DETENTION CENTRES 31
   5.7 RIGHT TO REDRESS, IMPUNITY 32
6. CONCLUSIONS AND RECOMMENDATIONS 34

COMMITTEE ON THE RIGHTS OF THE CHILD
27th Session - Geneva, 21 May / 8 June 2001

Report Concerning the Application of the Convention on the Rights of the Child by Turkey

Researched and written by Yasmin Na
Co-ordinated and edited by Roberta Ge
Director of the Publication: Eric

Preliminary Observations

Turkey ratified the Convention on the Rights of the Child (CRC) on 9 September 1994.[1] Turkey is also a party to the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)[2], the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW)[3] and the Convention Relating to the Status of Refugees (Refugee Convention).[4] In addition, Turkey recently became a signatory to the two principal covenants on human rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).[5] OMCT urges the timely ratification of these two instruments. On a regional level, Turkey is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)[6] and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.[7] Article 90 of the Turkish Constitution provides that "International agreements duly put into effect carry the force of law."

The right of children in Turkey to be protected against torture or other cruel, inhuman or degrading treatment or punishment is enshrined in the Constitution, the Penal Code[8] and the Criminal Procedure Law.[9] The rights of children who find themselves in conflict with the law are regulated primarily under the Law on Juvenile Courts[10] and the Regulation on Apprehension, Police Custody and Interrogation.[11] Children are

1 - Law No. 4058 published in the Official Journal No. 22184 of 27 January 1995.

2 - Turkey ratified CAT on 2 August 1988.

3 - Turkey ratified CEDAW on 20 Dec 1985.

4 - Turkey ratified the Refugee Convention on 30 March 1962.

5 - Turkey became a signatory to both ICCPR and ICESCR on 15 August 2000.

6 - Turkey ratified ECHR on 18 May 1954.

7 - Turkey ratified the European Convention against Torture on 26 February 1988.

8 - Law No. 765 Penal Code.

9 - Law No. 1412 Criminal Trial Procedures.

10 - Law. No. 2253 Establishment, Duties and Trial Procedures of Juvenile Courts.

11 - Regulation on Apprehension, Police Custody and Interrogation of October 1997.

7

further protected under the Law on Social Services and Child Protection Agency.[12]

Despite the existing legal framework for the protection of children's rights, numerous cases and reports of severe torture and other cruel, inhuman or degrading treatment or punishment of children in Turkey in recent years from a variety of sources are irrefutable proof that children are not adequately protected from these violations and that there are serious deficiencies in the system of protection of children in Turkey.[13] Some deficiencies are apparent from a legislative perspective, but the deficiencies are most acute from the level of implementation of legislation and the enforcement of the law against the perpetrators of such violations. Certain provisions of the Penal Code and Code of Criminal Procedure are currently being redrafted and are still before the Turkish Parliament. It is hoped that the revision of these provisions will address the deficiencies outlined in this report.

The Government of Turkey has been in a protracted armed conflict with the Kurdistan Workers Party (PKK) for over 15 years. In 1987 a "civil" state of emergency was declared, which allows the regional governor to exercise certain quasi-martial law powers, including imposing restrictions on the press, removing from the region persons whose activities are deemed detrimental to the public order, and ordering the evacuation of villages.[14] The State of Emergency was renewed in the south-eastern provinces of Diyarbakir, Hakkari, Sirnak, and Tunceli in November 2000 for 4 months. The Anti-Terror Law was adopted in 1991.[15] This law defines terrorism as "any kind of action conducted by one or several persons belonging to an organisation with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging to the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening, destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or

12 Law No.2828 Law on Social Services and Child Protection Agency.

13 - Sources include the Turkish Parliamentary Human Rights Committee, national non-governmental human rights organisations such as the Human Rights Association (HRA), the UN Special Rapporteur on Torture, the European Committee against Torture (CPT), and international non-governmental human rights organisations such as Human Rights Watch, Amnesty International, and the Kurdish Human Rights Project.

14 - By virtue of article 121 of the Constitution, the State of Emergency Act of 1983, Law No.2935 of 25 October 1983 regulates fundamental rights and freedoms in areas declared as being under a state of emergency, rather than the Constitution.

15 - Law No. 3713 of 12 April 1991.

8

damaging the internal or external security of the State, public order or general health by any method of pressure, force and violence, terrorisation, intimidation, oppression or threat(...)",[16] and prohibits, *inter alia*, the dissemination of separatist propaganda by written or oral means.[17]

The armed conflict in the south-east has had a profound impact on children. Forced and voluntary migration of families and communities has uprooted children and led to massive pressure on the resources of schools in the cities of the south-east.[18] In addition, children suspected of being linked to the PKK have been routinely detained, interrogated and tried under the Anti-Terror Law. Since the second half of 1999, the number of PKK-related terrorist incidents has reportedly declined by almost 90 percent.[19] This appears to have resulted in a decline in the number of political detentions and incidences of torture in the south-east. Conversely, the torture of street children, generally charged with stealing, is increasing, particularly following the recent immigration from the south-east to large cities such as Istanbul and Ankara.[20] In his report of 25 January 2001, the Special Rapporteur on Torture observed that despite a reported reduction in the most severe methods of torture in Turkey in recent times, the number and consistency of allegations continuing to reach him bound him to conclude that "torture and similar ill-treatment are still a common occurrence in Turkey and can be expected to continue to remain so, as long as the main recommendations of the Special Rapporteur, as well as the CPT, especially in respect of prolonged incommunicado detention, continue to be ignored."[21]

16 - Article 1 Anti-Terror Law.

17 - Article 8 Anti-Terror Law, as amended by Law No. 4126: "No one may engage in written and oral propaganda aimed at disrupting the indivisible integrity of the State of the Turkish Republic, country, and nation Meetings, demonstrations and marches with this aim may not be engaged in."

18 - The total numbers of people displaced from rural areas of south-eastern Turkey are not known, but estimates range from 560,000 to two million according to UNHCR's Ref World, Writenet Country Paper, "The Kurds - A Regional Issue: Update to April 1998", April 1998.

19 - "Turkey - Human Rights Developments", Human Rights Watch World Report 2001, 325.

20 - Report of the Special Rapporteur on Torture: Sir Nigel Rodley, Visit by the Special Rapporteur to Turkey, E/CN.4/1999/61/Add.1, 27 January 1999, para. 17.

21 - Report of the Special Rapporteur on Torture, Sir Nigel Rodley, E/CN.4/2001/66, 25 January 2001, para. 1139.

II. General Observations

2.1 Discrimination

OMCT believes that discrimination is one of the root causes of torture. Article 10 of the Turkish Constitution provides that "All individuals are equal without any discrimination before the law, irrespective of language, race, sex, political opinion, philosophical belief, religion and sect, or any such considerations." State organs and administrative organs are obliged under the Constitution to act in compliance with the principle of equality before the law in all their proceedings. The Law on Social Services and Child Protection provides that "Differences in class, race, religion, sect or region may not be considered in the provision of social services."[22] The State Report strangely defines the principle of non-discrimination as amounting to "the prohibition of segregation" and concludes that Turkish laws are in harmony with the CRC.[23] However, this interpretation of the principle of non-discrimination and the provision contained in the Turkish Constitution which includes "race", but does not explicitly refer to "ethnic or social group" as a ground for discrimination, is more restrictive than the one envisaged both by the CRC and the Human Rights Committee which has defined "discrimination" as "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, *national or social origin*, property, birth or other status(...)".[24]

Although the Kurds are Turkey's largest ethnic and linguistic minority[25], the Constitution does not recognise Kurds as a national, racial, or ethnic minority.[26] Although Kurds may participate in political and economic affairs, public assertions of Kurdish identity frequently invoke

22 - Article 4(d) Law on Social Services and Child Protection Agency.

23 - State Report of Turkey of 7 July 1999, CRC/C/51/Add.4, 8 August 2000, para. 179.

24 - Human Rights Committee, General Comment 18, Non-discrimination: 10/11/89. CCPR (emphasis added).

25 - There are approximately 15 million Kurds living in Turkey.

26 - Turkey recognises only those minorities falling under the Lausanne Treaty of 1923 - Greeks, Armenians and Jews.

harrassment or even prosecution.[27] While private oral and printed materials in Kurdish are legal, the use of minority languages in television and radio programs by political parties, and in schools, is seriously restricted by several laws, including some articles of the Constitution and the Anti-Terror Law.[28] Furthermore, failure to investgate and prosecute those suspected of killings, torture and other mistreatment seems to occur when the victims are Turkish citizens of Kurdish ethnic origin and is not a geographic problem, indicating discrimination on the grounds of race, language and/or association with a national minority.[29] In short, children of Kurdish ethnic origin are far more likely to suffer abuse at the hands of authorities than non-Kurdish children.

OMCT urges the Committee on the Rights of the Child to remind Turkey of its obligations under articles 2 and 30[30] of the CRC, and further, to emphasise the interdependent and indivisible nature of the CRC which requires States Parties to apply the principle of non-discrimination to all the other articles of the Convention. The Government of Turkey should be urged to respond to the allegations of discrimination against Kurdish children and to ensure that the principle of non-discrimination is applied and properly understood by all public officials in their treatment of all children.

2.2 Refugee Children

The CRC obliges States Parties to take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied, receive appropriate protection and humanitarian assistance in the

27 - For example in July 2000 a one year sentence imposed on former prime minister Necmettin Erbakan for a speech he made in March 1994 was confirmed by the Supreme Court for the charge of "incitement to hatred on grounds of race or religion". See also Human Rights Watch World Report 2001, 326; Graham-Brown, S., "The Kurds - A Regional Issue: Update to April 1998", RefWorld Writenet Country Paper, April 1998, 4.

28 - For example: Art.8 Anti-Terror Law (disseminating separatist propaganda); Penal Code Articles 312 (incitement to racial, ethnic, or religious enmity); 159 (insulting Parliament, the army, republic, or judiciary); 160 (insulting the Turkish Republic); the Law to Protect Ataturk; numerous provisions of the Press Law.

29 - Buckley, C., *Turkey and the European Convention on Human Rights, A Report on the Litigation Programme of the Kurdish Human Rights Project*, July 2000, 19.

30 - Article 30 of the CRC provides: "In those States in which ethnic, religious or linguistic minorities(...)exist, a child belonging to such a minority(...)shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language." See also "Turkey, Its Human Rights Record and the Kurdish People", March 2000, Kurdistan Committee, Geneva, 20.

enjoyment of applicable rights in the CRC and in other international human rights or humanitarian instruments to which the States are parties.[31] Turkey retains a geographic limitation to its obligations under the Refugee Convention, which means that only refugees from Europe are given refugee status. Since November 1994, however, the Government has granted temporary asylum to all those recognised as refugees according to the definition contained in the Refugee Convention. Those recognised are then referred to the United Nations High Commissioner for Refugees (UNHCR) for resettlement in a third country.

A number of problems remain for non-European refugees in this system, which puts them at risk of *refoulement*, an obligation under the Refugee Convention to which no reservation may be made. Turkey's obligations under CAT further prohibit *refoulement* where there are substantial grounds for believing that an asylum seeker would be in danger of being subjected to torture.[32] Primary problems for refugees include: status determination by officials of Interior and Foreign Affairs' Ministeries who lack expertise and independence; no provision for oral hearings or legal assistance; no written reasons for denial; and ineffective and inaccessible appeal mechanisms.[33] In light of the serious risks facing non-European refugee children in Turkey, OMCT recommends that Turkey remove its geographic limitation to the Refugee Convention and rapidly implement measures to address the deficiencies in refugee determination procedures in order to ensure that refugee children are not returned to countries where they face a threat to life or freedom.

31 - Article 22 CRC.

32 - Article 3 CAT states that: "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture."

33 - "Turkey - Human Rights and the European Union Accession Partnership", September 2000, Human Rights Watch, Vol. 12, No. 10(D), 28.

III. Definition of the Child

Article 11 of the Turkish Civil Code defines children as persons under 18 years of age, in conformity with Article 1 of the CRC. However, the age of majority may be attained earlier, either by marriage or by court verdict. The Civil Code provides that the minimum age for marriage is 18 years, however, males of 17 years and females of 15 years may be married, provided they have their parent's consent. The age of majority may be further reduced under article 88 of the Civil Code, whereby a judge may permit the marriage of a 15 year old male with a 14 year old female for "important reasons" and "under exceptional circumstances".[34]

Article 15 of the Civil Code allows a 15 year old to be declared as having legal age with his or her consent and with his or her parent's consent by court verdict. The judge is required to take into account the best interests of the child in delivering such a verdict.[35]

The provisions in the Civil Code regarding the minimum age for marriage are clearly discriminatory against girls, contrary to Article 2 of the CRC[36] and incompatible with the principle of the best interests of the child. The provision would also appear to be at odds with articles 414-416 of the Turkish Penal Code which regulate the offences of rape and sexual abuse. Article 414 embodies the crime of statutory rape of minors below the age of 15, while article 416 provides for varying sanctions for those who engage in consensual sexual intercourse with a minor between the ages of 15 and 18 years. In view of the lack of conformity of the legislative provisions on marriageable age and articles 2 and 3 of the CRC, OMCT recommends that legislative measures be taken to ensure an equal age for marriage for girls and boys.

34 - It is unclear what circumstances trigger this exception to the general rule. See below OMCT's Report "Violence against girls in Turkey" for a discussion of this rule.

35 - Article 12 Civil Code.

36 - This legislation is also inconsistent with Turkey's obligations under CEDAW.

IV. Protection Against Torture, Inhuman or Degrading Treatment or Punishment

4.1 Turkey's Legal Framework

Turkey's obligation under article 37 of the CRC to prohibit torture or other cruel, inhuman or degrading treatment or punishment of children is enshrined in article 17(3) of the Turkish Constitution which states that: "No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalty or treatment incompatible with human dignity." Article 243 of the Penal Code provides that: "Any Court or Committee President or member or other government officials who subjects suspects to torture in order to make them confess their crimes or subjects them to ill-treatment incompatible with human dignity shall be sentenced for up to five years to heavy imprisonment and prohibition of civil service for life or a temporary period."[37] Article 245 of the Penal Code provides that "those authorized to use force and all police officers who, while performing their duty or executing their superior's orders, threaten or treat badly or cause bodily injury to a person or who actually beat or wound a person in circumstances other than prescribed by laws and regulations, shall be punished by imprisonment for three months to three years and shall be temporarily disqualified from the civil service." Statements of suspects obtained by means of torture or other ill-treatment at police stations or at the offices of the prosecutors cannot be used as evidence in trials by virtue of the Criminal Procedure Law which provides that evidence shall be refused if it is not in compliance with the provisions of the law.[38] Prohibited questioning methods include "the use of physical and psychological treatment such as torture, ill-treatment or violence".[39]

The Office of the Prime Minister issued a circular on 3 December 1997 on respect for human rights and the prevention of torture. The circular provides, *inter alia*, that suspects will not be exposed to ill-treatment no matter what their crime; investigations into allegations of torture and ill-treatment

37 - Article 243 Penal Code.

38 - Article 238(2) Criminal Procedure Law.

39 - Article 135(A) Criminal Procedure Law; Article 13 of Law No. 3842 adopted in November 1992 amending the Criminal Procedure Law bans torture and other prohibited interrogation methods.

will be carried out without delay; legal proceedings will be instituted immediately against those officers shown to have been involved in torture and ill-treatment; and convicts and detainees will not be exposed to abusive or humiliating treatment either in prison or during periods of transfer.[10] A compliance monitoring procedure was established by the Prime Minister's Circular of 25 June 1999.

4.2 Practice

The Special Rapporteur on Torture, following his visit to Turkey in November 1998, reported that despite efforts of the Government, torture persists in Turkey[11] on a wide scale[12] and that specific problems exist with regard to children.[13] Reports in recent years by the European Committee for the Prevention of Torture (CPT) have confirmed the widespread use of torture in Turkey.[14] Reported cases of torture of children since 1998 and the work of the Turkish Parliamentary Commission for Human Rights set up in 1998 attest to the fact that the practice of torture of children continues undiminished. The situation in which children find themselves the victims of torture or other cruel, inhuman or degrading treatment or punishment is part of the wider context of the widespread and systematic use of torture or other cruel, inhuman or degrading treatment or punishment by the police and gendarmerie in Turkey. Those suspected of political crimes, and more particularly, those suspected of being connected to the PKK and others falling under the jurisdiction of the State Security Court, are most likely to be subjected to arbitrary arrest and detention, ostensibly under the Anti-Terror Law, and subsequently subjected to torture or cruel, inhuman or degrading treatment or punishment.[15] Ordinary criminal suspects, and particularly street children, also report

10 - Articles 2-4 Prime Minister's Circular of 3 December 1997.

11 - Report of the Special Rapporteur on Torture, E/CN.4/1999/61/Add.1, 27 January 1999, para. 39.

12 - *Ibid.*, para. 107.

13 -*Ibid.*, para. 17.

14 - Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey from 16 to 24 July 2000, CPT/Inf (2000) 19 [EN], 7 December 2000; Report to the Turkish Government on the visit to Turkey carried out by the CPT from 27 February to 3 March 1999, CPT/Inf (2000) 17 [EN], 7 December 2000; Report to the Turkish Government on the visit to Turkey carried out by the CPT from 5 to 17 October 1997, CPT/Inf (1999) 2 [EN] 23 February 1999.

15 - See for example Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 February to 3 March 1999, CPT/Inf (2000) 17 [EN], 7 December 2000, 7; Report of the Special Rapporteur, E/CN.4/2001/66, 25 January 2001, para. 1139.

frequent torture and mistreatment by the police.[46]

Children are exposed to the full range of torture techniques, the most commonly employed methods including: systematic beatings; stripping and blindfolding; exposure to extreme cold or high-pressure cold water hoses; electric shocks; beatings on the soles of the feet (*falaka*) and genitalia; hanging by the arms; "Palestinian hanging" (hands tied behind the back and the body suspended by the tied hands); deprivation of food and sleep; heavy weights hung on the body; water dripped onto the head; burns; hanging sandbags on the neck; near-suffocation by placing bags over the head; forced prolonged standing, isolation, loud music, witnessing or hearing torture; threats to detainees or their families; vaginal and anal rape with truncheons or other objects; squeezing and twisting of testicles; and other forms of sexual abuse.[47] Female children are at particular risk of being subjected to sexual torture, including being forced to strip in front of male security officers, being touched, and being raped or threatened with rape.[48]

However, the pattern of torture appears to have changed in the past few years in terms of becoming less brutal.[49] This change has been attributed to shorter custody periods and security forces deliberately avoiding leaving visible signs on detainees. Thus, methods such as blindfolding, stripping the victims naked, hosing them with high-pressure cold water, squeezing the testicles, using grossly insulting language and intimidation, are more frequently used than *falaka*, "Palestinian hanging" and electric shocks, although these methods are still used in some parts of the country.[50] Girls are often subject to sexual harassment and threats of rape, rather than outright rape, though rape and other sexual abuse continue to occur.[51]

The practise of abducting and torturing people without bringing them into custody has allegedly increased in the past few years,

46 - See below at 4.3 for cases. Human Rights Watch World Report 2001, 327.

47 - Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 February to 3 March 1999, CPT/Inf (2000) 17 [EN], 7 December 2000, 5; "Turkey - Torture and Mistreatment In Pre-trial Detention By Anti-terror Police", Human Rights Watch Publications, Vol. 9, No. 4(D), March, 1997, 2.

48 - See below OMCT's Report "Violence against girls in Turkey" for a detailed analysis of gender specific torture in Turkey.

49 - Report of the Special Rapporteur on Torture, E/CN.4/2001/66, 25 January 2001, para. 1139; CPT/inf. (2001) 17; Report of the Special Rapporteur on Torture, E/CN.4/1999/61/Add.1, 27 January 1999, para.14.

50 - *Ibid.*

51 - See below OMCT's Report on "Violence against girls in Turkey" for cases.

especially in Istanbul and Ankara, as a means of circumventing the new regulations on custody periods.[52] In addition, the practice of torture in prisons and use of excessive force to quell disturbances are alleged to be widespread.[53]

OMCT appreciates that the Turkish Government appears to be sincere in its determination to end the practice of torture in Turkey and acknowledges the number of legislative changes undertaken in recent years to address the problem, including efforts towards a fundamental shift in approach by the police: the police are no longer moving from the suspect to the evidence, but from the evidence to the suspect.[54] Nevertheless, certain legal and practical safeguards against ill-treatment are still lacking, and until these are in place, implemented and enforced, children are at risk of severe mistreatment by the police and gendarmerie and Turkey will remain in breach of its most fundamental obligations under the CRC.

4.3 Cases of torture and other cruel, inhuman or degrading treatment or punishment

Between 26 December 1995 and 5 January 1996, 16 teenagers (8 under the age of 18 years) were arrested on charges of being members of an illegal organisation and detained by the Anti-Terror Department of the Manisa Security Directorate. The students were reportedly tortured by means of beatings, electric shocks, hosing with cold pressurised water after having been stripped, and sexual abuse. The families immediately filed a complaint with the public prosecutor and the students were sent for a medical examination. At this examination, the students claim that the police officers stood next to them and the doctors did not conduct a physical examination. The medical certificates issued did not contain explicit confirmation that torture had taken place. However, the Medical Chamber concluded on the basis of the official medical reports, questionnaries and the hospital records that the students had been tortured. The prosecutor refused to open a case against the

52 - Report of the Special Rapporteur on Torture, E/CN.4/1999/61/Add.1, 27 January 1999, para.16.

53 - Ibid., para.24. Report of the Committee Against Torture, A/48/44/Add.1, 15 November 1993.

54 - Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey from 16 to 24 July 2000, CPT/Inf (2000) 19 [EN] 7 December 2000, 3.

police. Subsequent medical examinations revealed damage to the students' ears caused by the cold water spray, injuries from the squeezing of the boys' testicles, tuberculosis and chronic pain from electrical shocks to their genitals. The prosecutor again refused to open a case. After intense media coverage and pressure from a Member of Parliament who appealed to the President, the prosecutor opened a case against the police on 4 June 1996.[55] The students were acquitted in the Heavy Penal Court for lack of conclusive evidence that they had committed the offences. The State Security Court, however, relied upon the allegedly coerced statements and reached a conviction before the trial against the police had been concluded. On 11 March 1998, the police officers were acquitted owing to insufficient medical evidence of torture. Both the conviction of the students and the acquittal of the police were appealed against. In October 1998 the Court of Appeal overturned the verdict of acquittal of the police. In the retrial of the police, 10 policemen were acquitted. The teenagers were acquitted and/or had their convictions overturned in late November 2000. On 15 November 2000, the Manisa court sentenced one police officer to 10 years and 10 months, four officers to 9 years and 2 months, two to 8 years and 4 months, one to 5 years and 10 months, and a further officer to 5 years in prison as well as prohibition from employment in the civil service for various periods.[56] The policemen have applied to the Court of Cassation to reduce their sentences.

On 7 February 1996, Okan Kablan (16 years old) at the Istanbul General Security Directorate, detained on suspicion of political offences, was reportedly subjected to beatings; Palestinian hanging; pressurized cold water; blindfolding; and was obliged to sign a confession.[57]

Between 9 December 1997 and 20 December 1997 at the Aksaray Anti-terror Department, Fatma Tokmak and her son Azat Tokmak (2 ? years old), detained on suspicion of her husband and herself being members of the PKK, were reportedly subjected to various forms of torture. Fatma Tokmak was reportedly subjected to suspension; being left naked; squeezing of breasts; threats of rape; forced to watch the ill-treatment of her son; and forced to assume a sexual position with her son. Azat Tokmak was reportedly subjected to electric

55 - "Torture and Ill-Treatment of Children in Turkish Police Stations", 1 November 2000, Human Rights Watch Children's Rights Division, 3.

56 - E/CN.4/2001/66, 25 January 2001, para. 1138.

57 - E/CN.4/1999/61/Add.1, 27 January 1999, 30.

shocks on his back; and the stubbing out of cigarettes on his body. A medical certificate reported burns on his back and psychological imbalance. A complaint was made. The case was initially dropped, but the High Court decided to expand the investigation on appeal.[58] The appeal was rejected in June 2000. Fatma Takmak remains in Gebze Prison in a trial in which the death penalty is sought for her.[59]

On 8 January 1998, Emine Babacors and Nehir Bagdur (both 13 years old) detained on suspicion of theft, at the Manisa Security Directorate, were reportedly subjected to beatings; sexual harassment with hands and truncheons; threats of rape; and insults.[60]

On 4 June 1998 at the Security Directorate in Bezolu, Istanbul, Asrin Yesiller (7 years old), Yamur Tanrisevergil (8 years old), Sultan Tanrisevergil (6 years old), Mihriban Tomak (6 years old) and Inaç Caki (8 years old), were reportedly beaten and sexually harassed by police officers while in detention on suspicion of swindling and pick-pocketing. The children had their heads shaved, they were hosed with pressurized water while naked and subjected to *falaka*. The certificate issued by the Forensic Medicine Institute stated that the children could not work for seven days.[61]

On 4 June 1998 at the Kagithane Public Security Department, Istanbul, Aykut Yildiz (17 years old), detained on suspicion of car theft, was reportedly subjected to beating and kicking while naked, and at Beyoglu Public Security Department, Istanbul, was reportedly subjected to beating with iron bars, resulting in a broken arm. A medical certificate reported bruises to the face, shoulders and wrist, and a broken left wrist.[62]

On 29 July 1998, Deniz Celik (14 years old) at the Batikent police station, Ankara, detained on suspicion of theft, was reportedly subjected to beating and was left to stand naked while doused in cold water. A medical certificate reported bruising and oedema to the left eye.[63]

On 31 July 1998, Serdar Sulun (17 years old) at the Beyoglu Investigation Unit, Istanbul, while detained on suspicion of

58 - E/CN.4/1999/61/Add.1, 27 January 1999, 28.

59 - "Turkey - Torturers of mother and infant go free", 23 November 2000, Amnesty International On-line, EUR 44/061/2000, 2.

60 - E/CN.4/1999/61/Add.1, 27 January 1999, 32.

61 - E/CN.4/1999/61/Add.1, 27 January 1999, para. 17.

62 - E/CN.4/1999/61/Add.1, 27 January 1999, 26.

63 - E/CN.4/1999/61/Add.1, 27 January 1999, 29.

theft, was reportedly subjected to suspension; electric shocks to the genitals; *falaka*; sexual harassment; beating; threats; and insults. A medical certificate reported bruising and bleeding from the genitals.[64]

On 10 August 1998, Hakan Kizi (12 years old) at Mecidiyekoy Police Station, Istanbul, detained for unknown reasons, was reportedly subjected to beatings. A medical certificate stated that the patient could not work for 10 days.[65]

4.4 Cases of unlawful killing

On 9 January 1996, Cetin Karakoyun (14 years old), died of a gunshot wound to the head during incommunicado detention at Magazalar Police Station in Mersin. On 8 May 1996, a police officer was convicted of killing Cetin Karakoyun "through negligence and carelessness" and was fined US$30.[66]

On 19 February 1999, Necmettin Kahraman (17 years old) was fatally shot in Kiziltepe, in the Mardin province, when the security forces fired on a non-violent demonstration calling for independent monitoring of Abdullah Ocalan's trial.[67]

On 16 August 1999, Paban Cadyroolu (14 years old), was beaten and kicked to death by a police officer in Van.[68] Eight witnesses reported that they were detained and tortured to procure exculpatory statements for the police officer involved. The boy's father reported that the director of the Public Order Branch of Van Police Headquarters tried to persuade him not to make an official complaint.

64 - E/CN.4/1999/61/Add.1, 27 January 1999, 26.

65 - E/CN.4/1999/61/Add.1, 27 January 1999, 27.

66 - "Torture and Ill-Treatment of Children in Turkish Police Stations", 1 November 2000, Human Rights Watch Children's Rights Division, 3.

67 - "Turkey", Annual Report 2000, Amnesty International, 4.

68 - Ibid.

V. Children in conflict with the law

5.1 Age of Criminal Responsibility

Under the Turkish Penal Code, the age of full penal liability is 18 years. Article 53 of the Penal Code provides that the minimum age of penal responsibility is 11 years. Article 41 of the Law on Juvenile Courts defines a juvenile as "a child under the age of 15 when an offence was committed." Therefore the juvenile justice system is applicable only to children between the ages of 11 to 14 years. Children between 15 and 18 years old are tried in adult courts, although some provisions of the Law on Juvenile Courts still apply to this age group. For children between 11 and 15 years, article 54 of the Penal Code provides that they will be subject to article 53 of the Penal Code if they lack the power of discernment and the ability to judge. This means that they will not be held to be criminally responsible. If the child is conscious of the fact that the act which he or she has committed constitutes a crime, the child will be punished in accordance with the law under which the crime was committed.[69]

5.2 Police Custody

Under the Law on Juvenile Courts, children of 11 years and under may not be detained unless they are suspected of an offence requiring imprisonment for one year or more, and then only for the purpose of establishing their identity, after which they must be released. Article 138 of the Turkish Criminal Procedure Law states that a lawyer must be provided for minors under 18 years of age during interrogation and when statements are taken. A lawyer will be appointed by the Bar Association for detainees under 18 years. The August 1999 amendments to the Regulation on Apprehension, Police Custody and Interrogation requires that children of 12 to 18 years who are detained must be referred immediately to the public prosecutor, in order for a lawyer to be summoned in all cases, and to promptly notify the child's parents or relatives of the detention.[70] Article 135 of the Penal Procedure Code similarly provides that detainees have the right to inform their relatives of their

69 - Children generally receive reduced sentences. See 5.5 for more detail.

70 - August 1999 amendment to the October 1997 Regulation on Apprehension, Custody and Interrogation.

arrest. Article 144 of the Criminal Procedure Law further states that "[A] person who is arrested or detained may always communicate with his defender in a confidential environment where third parties cannot hear what is said without the requirement of a letter from the attorney. The correspondence of these persons with their defenders cannot be subject to control."

The Regulation on Apprehension, Police Custody and Interrogation sets out the principles and procedures that are to be applied by police officers when a person is apprehended and placed in custody or detention.[71] Article 23 of the Regulation provides that "the person under custody (...) cannot be submitted to physical or emotional interventions which disrupt the free will, such as mistreatment, hampering free will, torture, administering medicine by force, tiring, misleading, use of physical force or violence, use of devices;". Article 13 provides that "if a person apprehended for crimes committed by one or two persons is not released, he must be arraigned before the competent judge no later than 24 hours (...) If the crime falls under the scope of the State Security Courts, this period is 48 hours." This period may be extended by written order of the public prosecutor to a total period of 4 days in the case of collective crimes, including crimes falling under the jurisdiction of the State Security Courts.[72] If the investigation is still not completed after 4 days, the prosecutor may request the judge to extend the custody period to 7 days before the suspect is arraigned before the judge. For crimes committed in the emergency regions and falling under the jurisdiction of the State Security Courts, the 7-day period may be extended to 10 days upon request of the prosecutor and the decision of the judge.

Although article 20 of the Regulation provides that "the apprehended person may meet with the lawyer at any time and in an environment where others will not hear the conversation", in crimes falling under the Security Courts, the apprehended person may meet his lawyers only upon extension of the custody period by order of the judge, that is, after 4 days. The Turkish Government has indicated its intention to amend the Turkish Criminal Procedure Law to ensure that all detainees, irrespective of the offence for which they are suspected, have the right to legal counsel throughout police detention and the right to

71 - This Regulation entered into force on 1 October 1998.

72 - Article 14 Regulation on Apprehension, Police Custody and Interrogation.

the presence of a lawyer during interrogation, but has scheduled the draft of this change for the end of 2001.[73]

Although under the Anti-Terror Law only adults can lawfully be held incommunicado in accordance with the above-mentioned provisions, in practice, the prohibition against the incommunicado detention of children is regularly flouted.[74] Police officers sometimes register children at the station hours or days late and frequently fail to notify the child's relatives. OMCT believes that the possibility for children taken into police custody to have access to a lawyer from the outset of their deprivation of liberty and to contact their relatives are fundamental safeguards against ill-treatment, particularly as children are often unaware of their rights and are more vulnerable to abuse.

The Turkish Parliamentary Human Rights Commission published in May 2000 a series of reports showing that due to the lack of formal safeguards and official impunity, Turkish children are still at risk in police custody.[75] In March 2000 the Commission interviewed juveniles at the Bakirkoy Prison for Women and Children. Thanks to the information of one 14 year old who described being interrogated under torture for 8 days at Kadikoy Yeldegirmeni Police Station, the Commission was later able to visit the police station and find the relevant instruments of torture, including a "Palestinian hanger". Reports of torture rooms and instruments by other children were also confirmed by a visit to Istanbul's Küçükköy Police Station. The Commission's reports demonstrate the importance of establishing a national system of visiting boards to visit police stations and gendarmeries to interview detainees and inspect facilities, including regular and unannounced inspections by competent administrative authorities.[76]

73 - *Report on the Political Criteria of the Special Committee on Turkey-E.U. Relations*, Special Committee on Turkey-E.U. relations, 28 February 2000; *Calendar for Democracy, the Rule of Law and Human Rights*, Secretariat of the High Coordinating Council for Human Rights of the office of the Prime Minister, 2000; "Turkey - Human Rights and the European Union Accession Partnership", September 2000, Vol. 12, No. 10(D), Human Rights Watch, 7..

74 - "Torture and Ill-Treatment of Children in Turkish Police Stations", 1 November 2000, Human Rights Watch Children's Rights Division, 5.

75 - *Bakirkoy Kadin ve Cocuk Tutukevi Raporu 1998 ve 2000* (Bakirkoy Women's and Children' Prison Report 1998 and 2000), TBMM Insan Haklarini Inceleme Komisyonu Yayinlari (Human Rights Monitoring Commission Publications), May 2000; and *Sorusturma ve Kovusturma Istanbul Raporu 2000*, (Investigation and Prosecution Report for Istanbul 2000), TBMM Insan Haklirini Inceleme Komisyonu Yayinlari, May 2000.

76 - Such inspections are advocated in principles 29 and 30 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly Resolution 43/173 of 9 December 1988.

The fact that the regulations protecting children contain no specific sanctions for violations constitutes a major deficiency in the legislative protection against torture. In order to ensure that all detained children, irrespective of the crime of which they are suspected, be granted, the right of access to a lawyer from the outset of their custody, and be informed of their right to notify their next of kin of their situation, OMCT would recommend that appropriate sanctions be adopted and enforced against public officials who are found to have held a child in custody without notifying the prosecutor, interrogated a child without the presence of a lawyer, or informed them of their rights. Given the regular contravention of the rules pertaining to the rights of children in custody, the automatic audio and video-taping of police and jandarma questioning in every place of custody, as recommended by the Special Rapporteur on Torture[77], should also be considered as a practical safeguard against the torture of children in custody.

The persistence of torture of children in Turkey is due in part to the failure of prosecutors to monitor adequately the treatment of child detainees during the detention period and to investigate in a serious manner allegations of torture made by detainees.[78] Accused officers usually remain on duty pending a decision. Furthermore, convictions are based almost exclusively on confessions by the detainees[79], in contravention to domestic legislation banning the use of evidence produced by torture, article 15 of CAT[80], and the Guidelines on the Role of Prosecutors.[81]

In terms of preventive measures, OMCT would recommend the implementation of effective procedures for internal monitoring and disciplining of the behaviour of public officials. OMCT also strongly recommends education and training for all personnel involved in the custody, interrogation or treatment of any child subjected to any form of arrest, detention or imprisonment. In particular, there should be specific training on the CRC, the Regulation on Apprehension, Police Custody and Interrogation and education designed to

77 - Report of the Special Rapporteur on Torture, E/CN.4/1999/61/Add.1, 27 January 1999, para. 113(c).

78 - Report of the Special Rapporteur on Torture, E/CN.4/1999/61/Add.1, 27 January 1999, para.39.

79 - See for example the Manisa case summarised at 4.3.

80 - Article 15 of CAT provides that "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

81 - Adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990. Paragraph 16 of the Guidelines bans the use of illegally obtained evidence which constitutes a grave violation of the suspect's human rights.

prevent gender-specific forms of torture, including rape and other forms of sexual abuse.

5.3 Regular Medical Examinations

Another major deficiency in the safeguards against torture is the quality of medical examinations of children in police custody. The Regulation on Apprehension, Police Custody and Interrogation provides that any person in police custody or making statements must be given a medical examination immediately upon arrival and prior to departure from custody, as well as during the custody period if transferred for any reason.[82] Under article 354 of the Penal Code, those found guilty of the falsification of medical certificates may be punished with a sentence from 4 to 8 years. In practice, there are few prosecutions under this law.[83]

There are particular problems involving the lack of forensic training and equipment of medical personnel, the issuing of medical certificates for persons in detention, and the role and questionable independence of prison doctors.[84] Medical examinations of detainees are carried out by State employed doctors. In order to combat the use of torture by public officials, OMCT recommends that medical personnel required to carry out examinations of child detainees be independent of ministries responsible for law enforcement or the administration of justice. In addition, police officers (often the alleged perpetrators of torture) are frequently present during examinations, the examinations are brief, and written records tend to be of a standardised nature and devoid of any conclusions.[85] Some doctors who have issued accurate medical certificates or treated victims of torture have reported being ill-treated, harassed or intimidated by the police or have even been tried for abuse of duty.[86] In his report of 25 January 2001, the Special Rapporteur observed that positive procedural measures in respect of medical

82 - Article 10 Regulation on Apprehension, Police Custody and Interrogation.

83 - The most recent example of such a prosecution is that of Dr. Nur Birgen, chairperson of a state forensic medical facility in Istanbul, who was convicted of giving false medical reports and concealing evidence of torture in 1998. In December 2000, the court commuted a 3 months' imprisonment to a suspended $1.50 fine.

84 - Report of the Special Rapporteur on Torture, E/CN.4/1999/61/Add.1, 27 January 1999, paras.53-59.

85 - CPT/Inf (2000) 17 [EN], 7 December 2000, 6; "Turkey - Human Rights and the European Union Accession Partnership", September 2000, Human Rights Watch, Vol. 12, No. 10(D), 9.

86 - Report of the Special Rapporteur on Torture E/CN.4/2001, 25 January 2001, para. 1115; Report of the Special Rapporteur on Torture, E/CN.4/1999/61/Add.1, 27 January 1999, paras.62-65.

reporting were not fully in place or complied with as of July 1999 and that these would in any event be not reliable in proving that torture and similar ill-treatment had *not* taken place.[87] A forensic medical report which records no objective physical findings of ill-treatment is not a guarantee that ill-treatment has not occurred. For this reason OMCT recommends that detained children should be physically examined on a regular basis by medical personnel properly qualified in forensic medical techniques capable of identifying physical torture or ill-treatment, as well as psychological trauma potentially attributable to mental torture or ill-treatment.

The Protocol on the Effective Operation of Administrative, External Protection and Health Care Services in Penal Institutions and Detention Centers, signed between the Ministry of Health, the Ministry of Justice and the Ministry of the Interior, which came into force on 17 October 2000, provides that when remand and sentenced prisoners receive medical examinations in hospital, if the room or unit in which the examination is conducted is secure, the gendarmerie officers shall wait outside the door, and if the room or unit is not secure, the gendarmerie officers shall take protective measures inside the examination room, but far from the screen, at a distance from which they cannot over hear the conversation between doctor and patient. While OMCT welcomes attempts to improve the methods of medical examinations of persons in police custody, some problems remain with the Protocol. In particular, the Protocol leaves open the possibility of the enforcement officials being within sight of the examination if they consider that the room is not secure. This may affect the degree of confidence on the part of the person detained that he or she can speak freely to the doctor without running the risk of adverse consequences and the confidence of the doctor that he or she will not be subject to pressure either during or after a medical examination. For these reasons, OMCT strongly endorses the view held by the CPT that article 10 of the Regulation on Apprehension, Police Custody and Interrogation be amended so as to stipulate clearly that medical examinations of persons in police custody must *in all cases* be conducted out of hearing and out of sight of law enforcement officials, unless the *doctor* concerned requests otherwise.[88]

87 - Report of the Special Rapporteur on Torture E/CN.4/2001, 25 January 2001, para. 1139.

88 - Report to the Turkish Government on the visit to Turkey carried out by the CPT from 27 February to 3 March 1999, CPT/Inf (2000) 17 [EN], 7 December 2000, para. 10.

26

5.4 Children's Courts

Law No. 2253 on the Law on Juvenile Courts regulates the procedures concerning the juvenile justice system, which as previously noted, applies only to children aged between 11 and 15 when the crime was committed.[89] Article 10 stipulates that juveniles who cannot be prosecuted or convicted shall be referred to:

(a) The parents, legal guardians or any relatives who take the responsibility of care;
(b) Foster parents;
(c) Special institutions for child care and protection;
(d) State enterprises or skilled workmen or craftsmen who can offer them employment opportunities; or
(e) Rehabilitation centres or State or private hospitals offering special education to children who so require.

Before the decision to convict is taken, an investigation is conducted into the family, social conditions, upbringing and educational backgrounds of the juvenile between the ages of 11 and 15. The investigation is carried out by social workers, psychologists and psychiatrists employed by juvenile courts.[90] If this investigation does not deem punishment necessary, the juvenile delinquent is subjected to the provisions of article 10. It is stated in article 19 that, without hampering the implementation of the measures enumerated in article 10, during prosecution or trial, no decision to arrest can be taken concerning juveniles, who have committed crimes which require punishment of less than three years' imprisonment.

In accordance with article 25, trials of juveniles are held in camera. Their lawyers, parents and legal guardians, and social workers, psychologists and psychiatrists employed by the juvenile courts may be present in the courtroom. The establishment of an advisory board on legal issues concerning juvenile delinquency was approved in May 1995. The advisory board is entrusted with the task of policy-making on juvenile institutions, rehabilitation programmes and legislation in the light of international instruments, including the Convention on the Rights of the Child, the Riyadh Guidelines, the Beijing Rules and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

The Law on Juvenile Courts makes it mandatory for every region to establish

89 - As mentioned at 5.1, article 41 of the Law on Juvenile Courts defines a juvenile as "a child under the age of 15 when the offence was committed."

90 - Article 20 Law on Juvenile Courts.

central and provincial juvenile courts, which function under the guidance of a director and an advisory panel. A person appointed as a judge, advisor or prosecutor must have experience on children, be above the age of 30, and be a parent. Where such courts are not established, the normal criminal courts apply the law dealing with juvenile offenders. However, Law No. 3412 makes it mandatory for all children under 15 to be tried by a juvenile court.[91] Given that under article 40 of the CRC, Turkey is obliged to recognise the right of *every child* alleged as having the infringed the penal law to be treated in a manner which, *inter alia*, takes into account the child's age, and further, to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children, OMCT recommends that every child up to the age of 18 be entitled to be tried by a juvenile court.

Juvenile courts do not function in regions where a state of emergency has been declared. Furthermore, juvenile courts have been phased out in crimes falling within the jurisdiction of State Security Courts. According to the Child Right's Coalition Türkiye, juvenile courts presently exist in only 4 provinces of the country.[92]

The State Report is silent on the functioning of children's courts in Turkey. In accordance with its obligations under article 40 of the CRC, the Government should be urged to supply information pertaining to legislation, procedures, and institutions specially applicable to children alleged to have infringed the penal law, as well as the function, number and distribution throughout the country. In addition, the Government should be urged to further indicate the training programmes developed for all professional involved with the system of juvenile justice, on the provisions of the CRC and other relevant international instruments in the field of juvenile justice, including the "Beijing Rules", the "Riyadh Guidelines" and the United Nations Rule for the Protection of Juveniles Deprived of their Liberty.

5.5 Pre-Trial Detention

Article 12 of the Law on Juvenile Courts establishes that, pending sentencing, a child between the ages of 11 and 15 suspected of having committed a crime shall be subject

91 - Law No. 3412 of 25 February 1988.

92 - Child Right's Coalition Türkiye, "Alternative Convention on the Rights of the Child Country Report", 18.

to a placement order. The institutions and persons under whose care children may be placed under such orders are specified under article 10.[93] Article 19 of the Law on Juvenile Courts states that "a decision to arrest cannot be taken against children at the stage of investigation and trial in relation to actions requiring freedom-restricting sentences of a maximum of three years, provided that the measures specified in article 10 are implemented." These provisions would seem to indicate that detention should only be resorted to where the alternative measures in article 10 are inapplicable, although this is not explicitly stated in the legislation.

Article 36 states that juveniles who are between the ages of 11 and 15 at the time of the crime, and those who are below the age of 18 at the time of the decision to punish, are sent to detention centres (centres for the rehabilitation of juvenile offenders). The law is vague in its provisions with regard to the placement and detention of children in the sense that it is difficult to distinguish between provisions applicable to sentenced and pre-sentenced children. Furthermore, article 37 of the Law on Juvenile Courts provides for the detention of children in juvenile sections of adult prisons if no places are available in special accommodation, although specific provisions listing the proper places of detention mention special prisons for children and not adult prisons. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards, specified that the United Nations Rules for Administration of Juvenile Justice, *inter alia*, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development. For these reasons, OMCT recommends that the Law on Juvenile Courts be amended to ensure that a clear distinction is made in the provisions for sentenced and pre-sentenced children and that detention as a last resort should be the overriding principle in the sentencing of all children, in accordance with article 37(b) of the CRC and articles 2 and 11(a) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.[94]

93 - See above.

94 - Article 2 of the UN Rules for the Protection of Juveniles Deprived of their Liberty states that "Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases"; article 11(a) states that "A juvenile is every person under the age of 18."

Regarding sentences for children, if the crime normally carries a sentence of imprisonment longer than one year or heavy punishment, the child shall be subject to the measures enumerated in article 10 of the Law.[95] These measures may not be applied to children below the age of 11 if the parents, guardians or caretakers take adequate steps for their fostering. If sufficient measures are taken by parents or persons liable for taking care of the child who is younger than 11 years old, other measures may not be applied by the court. The Court may apply the measures under article 10 for children in the 11 to 15 age group if the criminal act does not require a sentence.[96] Article 54 of the Turkish Penal Code provides that a child in the 11 to 15 year age group convicted of a crime carrying the death sentence can be sentenced to imprisonment of up to 15 years. Article 55 of the Penal Code establishes a maximum sentence of 20 years of imprisonment for children aged 15 to 18 who have been convicted of capital crimes.[97] For the case where the offence entails life imprisonment, the maximum sentence that may be imposed on a child is 10 years. Any other sentence of imprisonment imposed on a child is half that normally carried by the offence. No cumulative sentence shall exceed 7 years. However, after a repeat offence and second conviction, the full sentence will be awarded. There is no provision establishing imprisonment for children as a last resort, contrary to article 37(a) CRC.

According to OMCT's information, there are currently around 400 children awaiting trial who are being held in the Istanbul prison. The average length of time that children have to wait for trial is one and a half years, although there are numerous cases of children in pre-trial detention for 3 to 5 years. The conditions of detention are extremely poor. Cells are overcrowded, there is no time allocated for sport or leisure activities, no education or training provided, and food is minimal and of low nutritional value.

OMCT reiterates its recommendation that the Law on Juvenile Courts should be amended to reflect article 37(a) of the CRC and article 2 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty which states that imprisonment must be a last resort and for the shortest period of time, and article 11(a) which defines a juvenile as any person under 18 years.

95 - The measures under article 10 are specified at 5.4.

96 - Article 12 Law on Juvenile Courts.

97 - Article 55 of the Turkish Penal Code was amended to preclude the imposition of capital punishment for children aged 15 to 18.

5.6 Condition of Prisons and Detention Centres

Children between the ages of 11 and 15 who receive sentences of imprisonment are sent to reform centres.[98] Children may reside in these institutions until they reach the age of 18, whereupon they are sent to open prisons, except for children who continue their education or who otherwise "generate a positive impression" who may stay in the institution until the age of 21.[99] Children with certified sentences and children who have been issued disciplinary punishments in the reform centres are sent to the Sinop Juvenile Prison. Unlike the other reform centres, there are no educational and training facilities. Female children whose sentences are certified are kept in a separate place at the Izmir House of Correction for Children.

Prison conditions remain poor, suffering from overcrowding, underfunding, and very poor administration. Despite the existence of separate facilities, it is reported that juvenile prisoners are often kept in the same wards as older prisoners. The Special Rapporteur on Torture reported one meeting with an alleged victim of torture who declared that she was 15 years old when she was kept in Byrampasa prison in Istanbul in an ordinary ward.[100] The Parliament's Human Rights Commission's comprehensive and highly critical reports on prison conditions of May and June 2000, including of the Bakirkoy Prison for Women and Children, alleged that torture remains widespread in the prison system and that those in positions of authority were not doing enough to ensure adequate living conditions for inmates. In September 2000 the Ministry of Justice and the head of Ankara's Bar Association signed an agreement allowing the Bar Association to inspect two children's prison facilities in Ankara. OMCT welcomes such initiatives, and calls on the Committee to urge the Government of Turkey to immediately implement measures to end the poor prison conditions in which incarcerated children find themselves, in particular, to ensure that the Standard Minimum Rules for the Protection of Prisoners are implemented, as well as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

98 - Article 12 Law on Juvenile Courts. There are 3 houses of correction, in Ankara, Elazig and Izmir.

99 - State Report of Turkey, para. 487.

100 - Report of the Special Rapporteur on Torture, E/CN.4/1999/61/Add.1, 27 January 1999, para.24.

5.7 Right to redress: impunity

In addition to articles 243, 245 and 354 of the Penal Code criminalising torture and ill-treatment, article 181 of the Penal Code provides that "where a government official, by abuse of his duty or failure to adhere to legal procedures and conditions, deprives a person of his personal liberty he shall be punished by imprisonment for not less than one year and no more than three years." Article 228 of the Penal Code similarly provides "A public officer who, by misuse of his authority, and in violation of laws and regulations, takes an arbitrary action regarding a person or a public officer or orders or causes others to order such an action, shall be punished by imprisonment for three months to one year;". OMCT would urge the Government of Turkey to specify what types of actions are covered by "arbitrary action" in the above provision, and in particular, whether it covers such actions as arbitrary arrest.

In practice, the investigation, prosecution and punishment of members of the security forces accused of torture or mistreatment is rare, despite the number of torture allegations. Where there is a conviction, the punishment is incommensurate with the gravity of the offence.[101] This has led to a climate of official impunity which has been regularly identified by human rights organisations, the Special Rapporteur on Torture and the CPT as a major factor in the continued systematic practice of torture in Turkey. OMCT recommends that the Government of Turkey takes measures to ensure that prosecutions and judges diligently investigate all allegations of torture. Any public official indicted for torture or ill-treatment must be suspended from duty, and if found guilty, the sentence must be appropriate, given the gravity of the crime.

One obstacle to prosecuting a State agent is the Law on the Prosecution of Civil Servants and other Administrative Officials which is intended to afford some degree of immunity for civil servants. For cases falling in its jurisdiction, an administrative board made up of civil servants conducts an investigation to determine whether the civil servant should be prosecuted or simply disciplined by his or her superiors. If the board determines that a prosecution is warranted, it forwards the case to the appropriate court and the prosecutor then initiates his or her own investigation. This law has led to the frustration and delay of the prosecution of

101 - 101 Report of the Special Rapporteur on Torture, E/CN.4/1999/61/Add.1, 27 January 1999, para. 72.

official misconduct.[102] OMCT advocates the amendment of the Law on the Prosecution of Civil Servants and other Administrative Officials to ensure that it cannot be used to delay or suppress complaints against police, gendarmes or soldiers for offences of torture or other ill-treatment.

The fact that the investigation of torture alleged by a detainee falling within the jurisdiction of a State Security Court is conducted by the public prosecutor of the respective Heavy Penal Court constitutes another jurisdictional problem. The consequence of this is that the trial of a detainee may proceed in the State Security Court based on the allegedly coerced testimony and the detainee may be found guilty before the finding of the Heavy Penal Court regarding the alleged torture. This is precisely what occurred in the Manisa case[103], in which 16 students (8 under the age of 18) were tortured by police officers. The Izmir State Security Court relied on the student's torture-induced confessions to convict them prior to the trial of the alleged torturers in the Heavy Penal Court. This is contrary to Turkey's obligation under article 15 of CAT to ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. In view of such problems, OMCT recommends the establishment of a review by an independent body of undisputed integrity of all cases in which the primary evidence of a convicted child is a confession allegedly made under torture.

Despite the obligation on prosecutors under article 153 of the Criminal Procedure Law to initiate an investigation when he or she has received a complaint of torture or other information indicating that a crime may have occurred, and under article 163 to charge those responsible where the investigation supports the allegations of torture, reports indicate an unwillingness on the part of prosecutors to prosecute.[104] Again the Manisa case is illustrative of this unwillingness to prosecute in the face of overwhelming evidence. In this case, the prosecutor refused to open a case against the police despite the conclusion of the Izmir Medical Chamber that the students had been subjected to a range of torture techniques, and again refused after subsequent medical examinations revealed deformation

102 - The most notorious example of this involved the case of the killing of 10 prisoners in Diyarbakir Prison on 24 September 1996. Due to conflicting jurisdictions, the first hearing occurred 9 months after the killings took place.

103 - The Manisa case is summarised at 4.3.

104 - Report of the Special Rapporteur on Torture, E/CN.4/1999/61/Add.1, 27 January 1999, para. 87.

in the students' ears due to a cold water spray, injuries from the squeezing of the boys' testicles, tuberculosis and that they suffered chronic pain from electrical shocks to their genitals. When, after intense media and political pressure the prosecutor did open a case against the police on 4 June 1996, it was 6 months after receiving the allegations.

The State Report is silent as to mechanisms for child victims of torture to obtain redress in the form of compensation and measures to promote physical and psychological recovery and social reintegration of child victims of torture, ill-treatment or other abuse. Given the number of reports of child victims, this is a glaring omission, and the Government of Turkey should be strongly urged to supply information on such mechanisms and measures in accordance with article 39 of the CRC.[105]

VI. Conclusions and Recommendations

The International Secretariat of OMCT is profoundly concerned by the situation of children in Turkey, in particular, by the degree of risk that children face of torture and other cruel, inhuman and degrading treatment or punishment while in custody or detention. OMCT believes that a number of safeguards, both legal and practical, must be implemented in order to fully guarantee the rights of children enshrined in the CRC.

OMCT would urge the Government of Turkey to take advantage of the decline in PKK-related violence and unrest in the south-east and of the incentives to join the European Union, and to take immediate action towards ending human rights violations against children.

Regarding the discrimination faced by Kurdish children, OMCT recommends that the Committee of the Rights of the Child:

- urge the Government to:

105 - Article 39 of the CRC provides: "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

- respond to the allegations of discrimination against Kurdish children;

- ensure that the principle of non-discrimination is applied and properly understood by all public officials in their actions towards all children.

Regarding the discrimination against girls, OMCT recommends that the Committee of the Rights of the Child:

- urge the Government to:

  - amend its legislation to fix the same minimum age of marriage for both girls and boys, without exception on a discriminatory basis.

Regarding the treatment of refugee children, OMCT recommends that the Committee of the Rights of the Child:

- urge the Government to:

  - remove its geographic limitation to the Refugee Convention;

  - ensure the proper training and expertise of officials of the Interior and Foreign Affairs' Ministries involved in refugee status determination; provide written reasons for denial; provide for effective and accessible appeal mechanisms.

Regarding the torture and other cruel, inhuman or degrading treatment or punishment of children, OMCT recommends that the Committee on the Rights of the Child:

- urge the Turkish Government to:

  - respond to allegations of torture and other cruel, inhuman or degrading treatment or punishment of children in Turkey;

  - enact legislation defining torture as foreseen in article 1 of CAT;

  - ensure that all children deprived of their liberty by law enforcement agencies, irrespective of the crime of which they are suspected, be granted, the right of access to an independent lawyer from the outset of their custody;

  - ensure that all detained children, irrespective of the crime of which they

are suspected, be informed of the right to immediately notify their next of kin of their situation;

- adopt and enforce appropriate sanctions for public officials who are found to have held a child in custody without immediately notifying the prosecutor, or interrogated a child without the presence of a prosecutor or a lawyer;

- implement automatic audio and video-taping of police and jandarma questioning in every place of custody in the country;

- ensure that medical personnel required to carry out examinations of child detainees are independent of ministries responsible for law enforcement or the administration of justice and properly qualified in forensic medical techniques capable of identifying physical torture or ill-treatment, as well as psychological trauma potentially attributable to mental torture or ill-treatment;

- amend article 10 of the Regulation on Apprehension, Police Custody and Interrogation so as to stipulate that medical examinations of persons in police custody must in all cases be conducted out of hearing and out of sight of law enforcement officials, unless the doctor concerned requests otherwise;

- ensure that prosecutors and judges diligently investigate all allegations of torture made by detainees;

- ensure that sentences for torture or ill-treatment are commensurate with the gravity of the crime;

- ensure that any public official indicted for torture or ill-treatment be suspended from duty;

- implement effective procedures for internal monitoring and disciplining of the behaviour of public officials, including sanctions for failure to provide children with a lawyer or to inform them of their right to notify their next of kin of their detention;

- ensure education and training for all personnel who may be involved in the custody, interrogation or treatment of any child subjected to any form of

arrest, detention or imprisonment. This should include specific training on the Convention on the Rights of the Child, the Regulation on Apprehension, Police Custody and Interrogation and education designed to prevent gender-specific forms of torture, including rape or any other form of sexual violence;

- establish a review by an independent body of undisputed integrity of all cases in which the primary evidence of convicted children is a confession allegedly made under torture;

- establish a national system of visiting boards to visit police stations and gendarmeries to interview detainees and inspect facilities. This should include regular (and unannounced) inspections by competent administrative authorities such as the Parliamentary Human Rights Commission;

- amend the Law on the Prosecution of Civil Servants and other Administrative Officials to ensure that it cannot be used to delay or suppress complaints against police, gendarmes or soldiers for offences of torture or other ill-treatment;

- ensure that victims of torture obtain redress and have an enforceable right to fair and adequate compensation. Child victims must also be entitled to measures to promote their physical and psychological recovery and social reintegration in an environment which fosters their health, self-respect and dignity;

Regarding the juvenile justice system in Turkey, OMCT recommends that the Committee of the Rights of the Child:

- urge the Government to:

  - implement fully the juvenile justice system in accordance with the Law on Juvenile Courts;

  - amend the Law on Juvenile Courts to ensure that every child is tried by a juvenile court;

  - supply information pertaining to legislation, procedures, and institutions specially applicable to children alleged as having infringed the penal law, as well as the function, number and distribution throughout the country;

37

- ensure that juveniles are kept separate from adults, unless it is in their best interests not to be;

- amend legislation to ensure that the deprivation of liberty is a last resort for all children in conformity with articles 37(b) of the CRC, and articles 1 and 11(a) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;

- indicate the training activities developed for all professionals involved with the system of juvenile justice, on the provisions of the CRC and other relevant international instruments in the field of juvenile justice, including the "Beijing Rules", the "Riyadh Guidelines" and the United Nations Rule for the Protection of Juveniles Deprived of their Liberty.

- improve living conditions in prisons and houses of correction in conformity with the Standard Minimum Rules for the Treatment of Prisoners.

COMMITTEE ON THE RIGHTS OF THE CHILD
27th Session - Geneva, 21 May / 8 June 2001

Violence against Girls in Turkey

39

d and written by Carin Benninger-Budel
Spe to Maija Wiltermuth for her research assistance
Director of the Publication: Eric Sottas

Summary

1. Preliminary observations 43
2. General Observations on the situation of Girls 45
3. Domestic Violence 47
4. Marital Rape 48
5. Crimes Committed against Girls and Women in the Name of "Honour" 48
   5.1 Cases of Crimes against Girls Committed in the Name of "Honour" 52
6. Virginity Testing 53
7. Rape and other Forms of Sexual Violence 55
8. Prostitution of and Trafficking in Girls 56
9. Violence Perpetrated by the State 58
   9.1 Cases of Torture Directed against Girls 60
10. Conclusions and Recommendations 65

Preliminary Observations

The submission of information specifically relating to violence against girls to the Committee on the Rights of the Child, in parallel with the global alternative report on the Rights of the Child in Turkey, forms part of the Violence Against Women Programme of the World Organization Against Torture (OMCT), which focuses on integrating a gender perspective into the work of the United Nations Human Rights Treaty Bodies.

The Convention on the Rights of the Child is currently the only "mainstream" human rights instrument in force which uses both feminine and masculine pronouns in its provisions, and which makes it explicit that the rights apply equally to female and male children. Moreover, the Convention stresses in article 2(1) of the equal protection norm that: "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's (...) sex (...)."

The Convention on the Rights of the Child includes the protection of girls from physical or mental violence in the home, in the community and from violence perpetrated by State officials in its provisions. It states in article 19 (1) that "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." Article 24 (3) argues that "States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children." In addition, article 34 declares that "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse." Norms applicable to violence against girls detained in penal or psychiatric institutions include: article 37 (a) which declares that "No child shall be subjected to torture or other cruel, inhuman

or degrading treatment or punishment," and article 37 (c) which provides that "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of her age." Article 39 provides that "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any form of cruel inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

The reporting guidelines of the Committee on the Rights of the Child contain an umbrella clause which requests States Parties to provide gender-specific information, statistical data and indicators on various issues covered by the Convention on the Rights of the Child. The particular situation of the girl child is also dealt with more specifically with regard to certain articles. For example, with respect to article 1 of the Convention (definition of the child), the Committee on the Rights of the Child has identified gender-specific issues of particular relevance to the girl child, such as the linking of the age of criminal responsibility to the attainment of puberty and the minimum age for marriage which is particularly problematic in cases where it is set very low. With respect to article 2 (non-discrimination), States Parties are requested to provide information "on the specific measures taken to eliminate discrimination against girls and when appropriate indicate measures adopted as a follow-up to the Fourth World Conference on Women."[1]

Turkey ratified the Convention on the Rights of the Child in 9 September 1994. Turkey is also a State Party to the Convention on the Elimination of All Forms of Discrimination against Women. In General Recommendation 19, the Committee on the Elimination of Discrimination against Women concluded that gender-based violence, including torture, is a form of discrimination against women as defined under article 1 of the Convention on the Elimination of All Forms of Discrimination against Women.

Turkey signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 8 September 2000 but has not yet ratified it.

1 - U.N. Doc. CRC/C/58, para. 28.

On 15 August 2000, Turkey signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, neither Convention has as yet been ratified.

At the regional level, Turkey is State Party to the European Convention for the Protection of Human Rights and Fundamental Freedoms and to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Despite these international commitments which either explicitly or implicitly protect girls from violence, violence against girls, at the hands of both private individuals and public officials, appears to be rampant. This report will examine the effects of gender on the form that human rights abuses in Turkey take, the circumstances in which the abuse occurs, the consequences of those abuses, and the accessibility of remedies. The report begins with a discussion of discriminatory legal provisions. The rest of the report places particular emphasis on domestic violence, crimes committed against girls in the name of honour, virginity testing, forced marriages, the high rate of suicide among girls, prostitution and trafficking of girls, as well as rape and other forms of sexual violence committed by state officials against girls.

II. General Observations on the Situation of Girls

The Constitution of Turkey provides for equality before the law of men and women without discrimination under article 10. The Article reads: "All individuals are equal without any discrimination before the law, irrespective of language, race, colour, *sex*, political opinion, philosophical belief, religion and sect, or any other such considerations" (emphasis added). However, there is no legislation in Turkey which punishes discrimination on the basis of sex.

The Constitution provides for the protection of the family, and especially the protection of the mother and children under article 41. The article reads: "The family is the foundation of Turkish society. The State shall take the necessary measures and establish the necessary organization to ensure the

peace and welfare of the family, especially the protection of the mother and children, and for family planning education and its application." With regard to education, article 42 of the Constitution states: "Primary education is compulsory for all citizens of both sexes and is free of charge in state schools."

However, OMCT notes that discrimination against girls persists in Turkish legislation. Article 11 of the Civil Code sets the minimum age for marriage at 18 years, however, with parental consent, this limit may be lowered to 17 years for males and 15 years for females. Moreover, article 88 of the Civil Code provides that a 15 year old male may be married to a 14 year old female in "exceptional circumstances" where a judge has ruled that there are "important reasons" for the marriage to take place. The provisions in the Civil Code concerning the minimum age for marriage are clearly contrary to article 2 of the Convention on the Rights of the Child and article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, and they render girls vulnerable to violence.

It should be noted that early marriage may lead to childhood or teenage pregnancy. Childbearing during early or middle adolescence, before girls are biologically and psychologically mature, is associated with adverse health effects for both the mother and child. Moreover, infants may be premature, suffer from low birth weight, or be small for gestational age.[2]

Early marriages also adversely affect the ability of girls to take advantage of educational and employment opportunities and, as a result, their rate of economic participation is lower than that of other women. According to information received, 90 percent of property in Turkey is male-owned. Despite the efforts made by the Turkish government to allow more girls to continue their education through the 8-year compulsory education requirement (implemented in 1998), in rural areas traditional family values place an emphasis on the education of the boy child rather than for the girl child. The literacy rate of girls in Turkey is still far below that of boys and often girls do not complete primary school.[3] The unequal gender power relations created by discrimination in education and employment renders girls vulnerable to violence, both in the domestic and the community sphere.

2 - WHO Doc. WHO/FRH/WHD/97., *Violence Against Women*,.

3 - UNICEF, available at http: //www.unicef.org/turkey/u_in_tr/beppfinalreport.htm

Article 302 of the Civil Code is another article which discriminates against women and violates the equal rights and responsibilities of men as parents in matters relating to their children. The article provides that if a woman gives birth to a baby and the father claims that she is not an honourable woman, the baby will not be recognised by the father and he is not liable to provide child support.

III. Domestic Violence

Domestic violence in Turkey is a serious problem. Woman battering in the home is one of the most common forms of violence against women. Professor Necla Arat from Istanbul University stated at a conference in the Southern town of Osmaniye in May 1998 that "nearly 25% of the Turkish women have been beaten severely, many of them constantly, by their husbands or other members of their families." These figures came from a survey involving more than 10,000 people throughout Turkey, carried out by the Association to Promote Contemporary Life.[4] According to another survey done in April 2000 by the Istanbul University, at least 10% of women in Turkey experience violence on a daily or weekly basis.[5] The surveys show that intra-family violence is a major problem crippling Turkish society. However, many women are too afraid or ashamed to file charges against their aggressors.

On 14 January 1998, a new law entitled "Protection of the Family" relating to violence in the family, was adopted. This new law provides for protection orders to be served on perpetrators of family-based violence and sets terms of imprisonment ranging from three to six months for the violation of these orders. One of the shortcomings of the law is that it is limited to spouses and therefore does not address violence by other family members such as in-laws or siblings. Moreover, it is reported that implementation of the law has been very weak in practice based, largely, on the uncooperative

4 - Anatolia News Agency, 25 May 1998, Edited/Distributed by HURINet - The Human Rights Information Network, DEBRA@OLN.comlink.apc.org (Debra Guzman).

5 - U.S. State Department, *Country reports on Human Rights Practices- 2000*, Bureau of Democracy, Human Rights, and Labor, February 2001, p. 27.

attitude of the police.[6] Women have reported being subjected to violence at the police stations where they turn for help.[7] Although some police training programmes have been implemented, so far little improvement has been recorded.

IV. Marital Rape

Marital rape is neither a crime under the Turkish Penal Code nor is it accepted as rape by Turkish society. Although women's consultation centres and shelters have tried to raise the issue of marital rape in public, these attempts have so far met with little success.[9]

V. Crimes Committed against Girls and Women in the Name of "Honour"

Some of the major violations of human rights aimed directly at women and girls are crimes committed in the name of honour, which are particularly prevalent in, but not limited to, the Eastern and South-eastern regions of Turkey.[10] The killing of women and girls occurs when a woman allegedly steps outside her socially prescribed role, especially, but not only, with regard to her sexuality and to her interaction with men outside her family.

In Turkey, the term "family honour" refers in fact to an entire social code of behaviour imposed on women and girls in order to keep them in an inferior position. Murders of women and girls for the sake of "family honour" form part of an entire social system based on this code. Virginity testing and forced marriages are also manifestations of this social code (see section 5 below). Several statutes explicitly refer to the virginity of victims as an essential element of a crime (see sections 6 and 7 on rape and prostitution and trafficking below). The whole system assumes that the man's "honour" resides within the body of his sister,

6 - International Helsinki Federation for Human Rights, Women 2000 an Investigation into the Status of Women's Rights in Central and South-Eastern Europe and the Newly Independent States, 2000, p. 455.

7 - Ibid.

8 - Ibid..

9 - Ibid, p. 456.

10 - Women for Women's Rights, *NGO Report on Implementation of CEDAW in Turkey*, January 1997, p. 11.

daughter, mother, or wife.[11] Social norms encourage families to act in defence of their "honour" and legal norms protect their ability to do so. Husbands, fathers or brothers have gone unpunished after murdering their wives, daughters or sisters in order to defend the "honour" of the family or their own "honour."

According to information received by OMCT, in most cases when a potential victim tries to take refuge with the police, instead of sending her to a women's shelter, or taking other protective measures, they reportedly hand her over to the family, requiring only that the family guarantee not to harm the girl or woman.

Although young girls and women in Turkey are killed in the name of "honour", there is no specific clause in the Penal Code to address this category of crime. In fact, the structure of the Turkish Penal Code perpetuates the idea that a woman's sexuality should be controlled by her family.

The Penal Code provides for higher penalties for murders within the family. According to its article 449, where the act of killing is committed against one's wife, husband, brother, sister, adopted patents, adopted child, stepmother, stepfather, stepson or daughter, father-in-law, mother-in-law, son-in-law or daughter-in-law, the offender will be punished with a life sentence, while according to article 448, the sentence for non-relatives is imprisonment for 24 to 30 years. These articles seem to accord with article 41 of the Turkish Constitution which reads that: "The family is the foundation of Turkish society. The State shall take the necessary measures and establish the necessary organization to ensure the peace and welfare of the family, especially the protection of the mother and children, and for family planning education and application."

The protection of the family is in sharp contrast with the provisions that reduce penalties in cases of crimes committed in the name of honour. Although Turkey's Criminal laws do not explicitly provide for an "honour defence", several provisions of national law contain defences that have been used in order for perpetrators of the so-called "honour killings" to receive reduced sentences.

Certain articles of the Penal Code are currently in the process of being revised and it is hoped that the revision will amend those provisions through which perpetrators of crimes against women committed in the

11 - Campaign Against Honour Killings in Turkey, <http://www.gn.apc.org/honour_killings.>

name of honour, go unpunished, receive reduced sentences or, are exempted from prosecution on the justification of "honour".

According to information received, article 462 of the current Turkish Penal Code will be repealed in the new Penal Code. With regard to perpetrators of offences [homicide and battery] against a wife, husband, sister or offspring, this article, as it now stands, provides that if the crime is committed while the victim is caught red handed in the act of adultery or illegal sexual intercourse, or was about to commit adultery or illegal sexual intercourse, or was in a situation leaving no room for doubt that he or she had just committed the act of adultery or illegal intercourse; or against another person caught participating in such acts with the aforesaid relatives, or against both, the punishment prescribed for the offence shall be reduced to one-eighth and heavy imprisonment shall be commuted to imprisonment.

The provision does not include brothers as covered victims, but it provides them with protection in cases in which they kill their sisters in the name of "honour". This is important as it is often the younger males in the family who are used as tools to commit these acts of murder as their sentences are lighter due to fact that they have not reached the age of full penal responsibility.

OMCT welcomes the proposal to repeal article 462 of the Penal Code as sentence reductions for murders in response to adultery and adulterous situations present a particularly serious danger for women. It must be noted, however, that articles 49, 50 and 51 of the Criminal Code, are more frequently used in trials for "honour" crimes than article 426 of the Penal Code.

Article 49 of the Criminal Code provides that "no punishment shall be given to the perpetrator of acts done: ((2)) In immediate necessity to repulse an assault against his or another persons chastity. This article makes "chastity" an attribute that can be defended by force.

Article 50 of the Criminal Code provides that "Those who, while performing an act specified in article 49, surpass the limit prescribed either by law, by cognisant authority or by necessity, shall be punished, in cases where death is prescribed for the offence, by imprisonment for not less than eight years and in cases where permanent heavy imprisonment is prescribed for the offence, by imprisonment for six to fifteen

years. In other cases, the punishment prescribed for the offence shall be reduced by not less than one sixth and not more than one half; heavy imprisonment shall be commuted to imprisonment, and permanent disqualification to hold public office shall be commuted to temporary disqualification."

Article 51 of the Criminal Code provides that "If a person commits a crime in the heat of anger or under influence of strong grief caused by an unjust provocation, he shall be punished in case the punishment of death is prescribed for the offence, by heavy life imprisonment; and if heavy life imprisonment is prescribed for the offence, by heavy imprisonment for twenty-four years. In other cases the punishment prescribed for the offence shall be reduced by one-fourth.

Where provocation is grievous and severe, heavy imprisonment for twenty-four years shall be given instead of punishment by death, and heavy imprisonment for not less than fifteen years shall be given instead of heavy imprisonment.

Other punishments shall be reduced by one-half to two-third."

Although the word "honour" is not mentioned in these articles, it has been successfully used as a mitigating factor in "honour" crimes cases tried in Turkey. Judicial practice in the regions most affected by the practice of "honour killings" shows an implicit acceptance of an "honour" defence and judges often use their discretion to allow culture and tradition to serve as a mitigating factors. Because of the general social acceptance of honour as an extremely important element of Turkish culture, sentence reductions for the perpetrators of crimes committed in the name of honour are rarely challenged.

In this is regard, it is also important to mention article 59 of the Penal Code which provides that apart from statutory measures of mitigation, wherever discretionary matters of extenuation in favour of the offender are accepted by the court, imprisonment for life, instead of death, and imprisonment for thirty years, instead of imprisonment for life, shall be imposed. Other punishments shall be reduced by not more than one sixth. This article allows judges to exercise discretion in applying mitigating factors beyond those provided by law.

5.1 Cases of Crimes against Girls Committed in the Name of Honour

The following incidents provide examples of "honour" crimes against girls. The first two cases were obtained in March 2001 from the following web-site www.gn.apc.org/honour_killings, created in 1998.

1. Yurdagül Ayax, aged seventeen, was 8 months pregnant with twins, when she died of 30 knife wounds. She was found in the local cemetery with a knife in her vagina. Before her death, her father, Hanife Ayaz, chained her in his basement to force her into marriage with a man she did not love. She was supposedly in love with her cousin and married him, but after the marriage he forced her into prostitution and was arrested by the police. Five days later she was found dead.

2. Aysel Dikmen (18 years old) was executed in the name of honour by her father Mahmut Dikmen (55 years old). Aysel ran away from home with the man she loved - Ramazan Kiliç - to another village. As she was under age, she was arrested by the police. The police knew she would be killed because of traditional values, and they did not return the girl to her family, instead she was placed in an orphanage in Ankara. After her father insisted that he would not harm her she was eventually returned to her family. The family forced her into a marriage with her cousin Ibrahim Ok. Both of them went to a relative's house, not knowing that her father was there and he killed her. While he was trying to run away, he fired the gun accidentally and killed himself.

3. In Case No: 1997/18 from the 3rd Division Criminal Court, the Judge made the following statement when he convicted the perpetrator who was victim's brother: " The victim Yasemin was not a proper girl, she was not close to her family, at times she went against her family's wishes, she loved going out and living freely, which is why she was hanging around with some men and one night before the incident occurred she did not even come home ...." The victim was 16 years old.

4. Two sisters, Hanym and Türkan Kaya, and their female cousin Supret were murdered in the name of honour by their

brothers. Their bodies were found on 12 April 2001 in Balçyk Köyü, Kocaçukur Mevkii in Gebze, Istanbul. They were reportedly killed because they were considered to have destroyed the family name by running away from home. Seyithan Kaya and Orhan Kaya claimed that they were seen around with men. After the investigation, it was found that the murders were committed by Pakir, Burhan, Veysi, and Gyasettin Kaya. According to the newspaper report, the sisters were suffocated to death first by their brothers and their cousin was killed shortly afterwards. Pakir, Burhan, Seyithan, Orhan Kaya have been arrested, and, at the time the news appeared in the press, the police were still looking for Gyasettin and Veysi.[12]

5. In Kulp (Diyarbarbakir) during 1999, a young Kurdish girl, aged fourteen, was repeatedly raped over a period of time by a village guard (A A). For many months, the young girl tried to hide her pregnancy resulting from the rape. In November of that year the girl gave birth to a still-born child. A few days after her release from the hospital, two cousins came to see the girl at a relative's house. They pointed a gun at her and took her out into the street and shot her. For eleven days, nobody came to get the corpse of the young girl for burial, after which time, her body was buried at night in a cemetery for unidentified persons.[13]

VI. Virginity Testing

Women's sexuality as a reflection of family honour is also manifested in the practice of virginity testing. Due to beliefs that the reputation of the family is closely connected to the sexual behaviour of female family members, it is considered to be both the right and the responsibility of the family to subject their daughters to virginity testing. Another issue is the amount of money which has to be given to the family of the bride by the groom's family, and "marriages through mediation of go-betweens."[14]

12 - Sabah newspaper, 16 April, 2001.

13 - Legal Aid for Women Raped or Sexually, *Sexual Violence: Perpetuated by the State*, 2000, p. 136.

14 - Information received from the Human Rights Foundation of Turkey.

Despite the government decree, announced in January 1999, which provides that virginity tests may only be conducted following judicial approval and should only be used to gather evidence for criminal investigations, forced virginity testing by family members continues to be widespread. According to information received, in many "honour killing" trials, the virginity of the victim is tested by forensic scientists. The virginity of the victim is reportedly taken into account during trial and sentencing.

Moreover, the Turkish State itself is reportedly also involved in forcible virginity controls. Young girls and women in detention facilities and schools are often subjected to virginity tests by state officers.[15]

The maintenance of female virginity has traditionally been equated with family honour, and continues to be one of the greatest causes of violence against women. Coercive virginity tests are degrading, discriminatory and unsafe and constitute a violation by State authorities of the bodily integrity, person and dignity of women in Turkey.

A problem closely related to the maintenance of female virginity and family honour is the high rate of suicide among young girls in Turkey. Girls commit suicide in large numbers because they have lost their virginity or because they have been forced into marriage or sent away to special re-education establishments.

According to information received, the number of female suicides is rapidly increasing in towns in South eastern Anatolia, especially in Batman. During the first eight months of the year 2000, the number of recorded suicides were double the country average, with a rate of 6.42 for every 1,000 members of the population. Moreover, 80.8% of suicide victims in Batman were women and the majority of these were aged between 13 and 24 years.

15 - Ibid.

VII. Rape and other Forms of Sexual Violence

Articles 414-424 of the Turkish Criminal Code deal with crimes of sexual assault, entitled "Felonies Against Public Decency and Family Order." The title of this section of the Code demonstrates that the approach taken by State authorities to the investigation and the prosecution of sexual violence does not stress the violation of the physical and psychological integrity of victim, but rather the harm done to public decency and family order.

Article 414 states that "whosoever rapes a minor under the age of 15 shall be sentenced to a minimum of five years imprisonment." If force, violence, threats or abuse of minors is involved then the minimum sentence is 10 years' imprisonment. The consent of a minor below the age of 15 to sexual intercourse does not waive the crime or hinder the punishment. According to article 415, "Those who commit an act or action against the honour and chastity of a child who has not completed the age of 15 shall be imprisoned from two to four years and if this act and action shall be executed under the conditions specified in the second paragraph of the above article, the imprisonment period shall be 3 to 5 years." Article 416 provides that sexual intercourse with a person between 15 and 18 years, even if consensual, constitutes a crime and carries a punishment of six months to three years imprisonment. According to article 417, "If the acts and actions specified in the above articles are committed by more than one person or committed by one of the brothers, family members, parents, guardians, teachers, trainers or servants or those to whom the child is left, the penalty foreseen by the law shall be increased by half."

In abduction cases, the Turkish Criminal Code defines rape of a virgin aged 15 or over with a promise of marriage as a crime under article 423 (1) providing that anyone removing the virginity of a girl above 15 years of age with the promise of marrying her shall be sentenced to between 6 months and 2 years of imprisonment. If the man marries the woman, the case and the punishment are deferred. However, if the couple divorce within five years and proceedings are initiated and the husband is found guilty, the

aforementioned punishment is implemented. The crime is only punishable if the victim was a virgin at the time of the rape.

OMCT is very concerned by the fact that sex crimes committed against non-virgins are perceived to be a less serious offence than those committed against virgins. Moreover, OMCT is gravely concerned by the fact that there shall be no punishment in cases of rape when the perpetrator marries the victim. This provision may lead to a woman being pressured into marrying her rapist in order to preserve her family's "honour", thus punishing the victim while the perpetrator is acquitted.

Moreover, according to article 434 of the Turkish Criminal Code, if a group of men abduct, rape, and commit sexual offences against a minor they commit a crime. However, if one of the men who commit this crime marries the victim, charges against all of them are dropped.

VIII. Prostitution of and Trafficking in Girls

According to the Directorate General on the Status and Problems of Women (affiliated to the Prime Minister) women and girls in Turkey entered into prostitution due to low wages or sexual harassment in previous jobs, and chose prostitution as it guaranteed them economic security. One third were forced into prostitution by husbands and boyfriends.[16]

Prostitution is legal in Turkey and working prostitutes are required to register and undergo regular medical examinations. Only single Turkish women over the age of 18 may register and registered women cannot marry while registered.[17] However, most women prostitutes work outside the official system. Unregistered prostitutes are reportedly at the mercy of the police, facing violence and sexual abuse as well as arbitrary detention in police stations.[18]

There are no measures in Turkey to protect women working as prostitutes. *De jure*,

16 - International Helsinki Federation for Human Rights, A Form of Slavery: Trafficking in Women in OSCE Member States, Report to the OSCE Supplementary Human Rights Dimension Meeting on Trafficking in Human Beings, 2000, p. 59.

17 - Anti Slavery International, "Redefining Prostitution as Sex Work on the International Agenda," 1997, p. 24.

18 - Ibid.

incitement to prostitution is described as a crime and is regulated by articles 435 and 436 of the Criminal Code. Incitement to prostitution is a criminal act under article 435 while article 436 of the Criminal Code deals with trafficking in women.

According to article 435, punishment for incitement to prostitution ranges from six months to three years imprisonment or a fine, depending on the age of the woman incited:

- It the person incited is under the age of 15, imprisonment is no less than two years. If the inciter is a relative of the women, or an adoptive relative of the women, or is a parent, teacher, guardian, or servant then the punishment is no less than three years.

- If the person incited is between the ages of 15 and 21 then the inciter is sentenced to imprisonment of 6 months to 2 years and a fine. If the inciter is a relative, then the punishment is no less then 2 years imprisonment and a fine.

- If the person incited is over 21 and the inciter is her husband, relative, the person who adopted her, or a parent, teacher, guardian, governess or servant then the penalty ranges from 6 months to two years imprisonment.

Article 436 states that:

- A person who rapes, sends or transports from one place to another a virgin or a women under the age of 21 with her consent or using violence, force, threats, trickery, or influence will be sentenced from one to 3 years imprisonment and a fine.

- If this crime is committed against a women under the age of 21 by her husband, her adoptive parent, her parent, teacher, guardian, governess or servant, the sentence shall be between 2 and 5 years imprisonment.

Article 436 of the Criminal Code only protects women under the age of 21 or virgins. OMCT notes again with concern that crimes committed against non-virgins are taken less seriously.

During the past decade, Turkey has become a major destination and transit country for trafficking in women and girls for the purpose of forced prostitution. According to the

International Organization for Migration (IOM) and domestic NGOs, most trafficked women and girls in the country are from Albania, Bulgaria, Moldova, Romania, and the Ukraine. According to the IOM, arrests (and in most cases, deportation) of nationals from Moldova, Romania, and Ukraine rose from 6,000 in 1998 to approximately 11,000 in 1999. In 1997 alone, Turkey deported 7,000 Romanian women.

Many girls and women come to Turkey believing that they will be legitimately employed as models, entertainers or translators. Once these women and girls arrive in Turkey, they find themselves in debt bondage to their traffickers. Women who attempt to escape risk being beaten, gang-raped, or killed.

Trafficking in women is dealt with using laws on illegal migration and with unregistered prostitution. Under the Turkish Criminal Code, as mentioned above, it is illegal to abduct and detain a woman or a child (however, this law relates more to the custom of kidnapping a bride, in which case punishment is suspended if the abductor and the victim get married), to incite to prostitution and to send and transport a virgin or woman under 21.

OMCT is extremely concerned by the fact that Turkey does not seem to provide any formal protection, assistance, education or rehabilitation to victims of trafficking. Victims of trafficking are treated as criminals by the Turkish authorities and are often summarily deported to their country of origin.

IX. Violence Perpetrated by the State

For a detailed outline of Turkey's legislation relating to torture and ill-treatment by state officials, see OMCT's General Report on the Rights of the Child 2001, to the Committee on the Rights of the Child.

Following his visit to Turkey in November 1998, the UN Special Rapporteur on Torture reported that despite the efforts of the Government, torture persists in Turkey on a widespread scale and that specific problems exist with regard to children.[19] Girls are

19 - U.N. Doc. E/CN.4/199/61/Add 1, paras 17, 39, and 107.

particularly at risk of sexual torture. Forms of torture inflicted upon girls include electro-shocks to the genitals, standing for long periods of time, being forced to strip and stand naked in front of male guards, beatings targeting the genitals and breasts, use of high-pressure water hoses, and sexual abuse including rape and threats of rape. Moreover, threats of rape are often compounded by police taunts that rape will deprive women of their virginity and their honour.

These kinds of torture and ill-treatment of girls are part of the broader context of the widespread and systematic use of torture or other cruel, inhuman or degrading treatment or punishment by the police and gendarmes in Turkey. Those suspected of political crimes, and more particularly, those suspected of being connected to the PKK and others falling under the jurisdiction of the State Security Court, are more likely to be subjected to arbitrary arrest and detention, ostensibly under the Anti-Terror Law, and subsequently subjected to torture or cruel, inhuman or degrading treatment or punishment.

Rape was used as a form of torture against political prisoners and detainees in Turkey before the conflict between the Government of Turkey and the Kurdish Workers Party (PKK), but its use has increased dramatically since the conflict began. According to an August 1998 report by the Office for Legal Assistance Against Sexual Harassment and rape in Custody, out of 59 complaints received, 49 came from the Kurdish region.[20] Moreover, women and girls in these regions have frequently reported sexual harassment by village guards.

Since the second half of 1999, the number of PKK-related terrorist incidents has reportedly declined by almost 90 percent.[21] This appears to have resulted in a decline in the number of political detentions and incidents of torture in the south- east of the country. However, the torture of street children, generally charged with stealing, is increasing, particularly following the recent increase in immigration from areas in the south-east to large cities such as Ankara and Istanbul.[22]

Many cases of rape and other forms of sexual violence in custody and by village

20 - Pazartesi, August 1998, quoted in International Helsinki Federation for Human Rights, see note 6, p. 460.

21 - Human Rights Watch, Turkey - Human Rights Development, World Report 2001, p. 325.

22 - Report on the visit of the Special Rapporteur on Torture to Turkey, U.N. Doc. E/CN.4//1999/61/Add1, para 17, and Human Rights Watch, see footnote 18, p. 327.

guards in Kurdish areas have gone unpunished. One of the reasons for this impunity is that the State assumes protection for its own officials and does not investigate or adequately punish acts of violence committed by officials. Another reason is that women and girls frequently do not file complaints of rape and other forms of sexual violence out of shame and fear. Due to the fact that in Turkey a woman's sexuality is a reflection of the family honour, if a woman is not chaste then she may be viewed as a burden in the family, ostracized, subjected to forced marriage, or even killed (See the first case in section 9.1 below). Thus, while all victims of torture are confronted with major obstacles when attempting to lodge a complaint or to seek redress, when rape or another form of sexual violence constitute a method of torture, it is even more likely that the victim will not complain out of fear and shame, thus leading to the negation of this violence and to the impunity of the torturer. According to a poll conducted by the NGO, Legal Counsel Project Against Sexual Harassment and Rape, three quarters of female detainees in Turkey experienced some form of sexual violence, but only one-sixth of those who had been subjected to such violence reported it to the authorities. The climate of impunity is a major factor in the continuation of the systematic practice of torture in Turkey.

9.1 Cases of Torture Directed against Girls

1. Necla Akdeniz (14) was repeatedly raped at gunpoint over a period of several months by a village guard in Diyarbakir until she became noticeably pregnant and relatives complained. The guard was detained but later released, while the girl's family decided she should be killed. After the police ignored appeals to protect the girl, she was killed by her own cousin in November 1999.[23]

2. A ten year old girl from the village Eryol in the province of Diyarbakir, was raped in her house at gunpoint by a village guard (S. Askan) while her parents were absent. The guard threatened to kill her family if she ever spoke out about the rape. After some time, the girl broke her silence and told her father what had happened to her. After being discouraged by the village police station, the father went to Diyarbakir and reported the case to authorities on February 21st 1997.

23 - Özgür Bakis, 29 November 1999, quoted in International Helsinki Federation for Human Rights, see note 6, p. 460.

Despite a report from the forensic medical institute stating that the hymen of the victim was torn and the presence of witnesses willing to testify against the village guard, the prosecutor decided to acquit the accused due to lack of evidence. At trial, the court refused permission for the victim to undergo a psychological evaluation.[24]

3. An eleven year old Kurdish girl was arrested on 19 November 1998 during a police raid on the HADEP party building in Izmit. The young girl was bundled into a police car along with other arrested persons and a policeman tried to kick her in the vagina with his boot. When she blocked the attempt with her hands, the policeman kicked her in the stomach. This cause the young girl to scream upon which the officer replied "do you scream out of lust or pain?"
   While inside the headquarters, the young women was forced to witness the ill treatment of the other women that were arrested. She was also able to hear the screams of her two brothers who were also arrested during the raid. After three days the victim was released due to her young age.[25]

4. In 1998, two thirteen year old girls from Izmir visiting their aunt in Manisa were arrested at a bazaar and taken to the "Police Headquarters Manisa". "The moment the girls entered the police station, the policemen started to take off their cloths until they were completely naked.(...) The policemen then began to touch their breasts and sexual organs with a truncheon. Then they assaulted the girls with their own hands. While they inserted their fingers into the vaginas of the girls, they squeezed their breasts with their hands. 'Their breasts are as hard as stone', they said to one another."
   After their release, a charge was filed at the prosecutor's office in Izmir. The written reply from the chief of the police headquarters in Manisa stated that the girls were arrested because they were pickpockets. "They were put into a detention room in the evening and set free the next morning."[26]

5. In June 1998, a fourteen year old girl, was arrested while walking on the street. When she arrived at the police station she was brought to the "beating room."

24 - Legal Aid for Women Raped or Sexually, *Sexual Violence: Perpetuated by the State*, 2000, p. 11

25 - Ibid., p. 91-92.

26 - Ibid., p. 60.

In this room, the policemen squeezed her breasts and sexual organs while they violently undressed her. Later, a policemen took his penis and pressed her head against it and he also tried to force his penis into her mouth, after which, he urinated over her. Some time later, the young girl was forced, completely naked, into a cell with male prisoners where they left her for a while. When the policemen came, they took her to the toilets were they exposed her to a high-pressure water hose. One officer tried to squeeze the hose into her vagina.

The young victim was kept under arrest at the Bakirkoy prison for women and children while her trial continued. She remembers the torturing officers very well, especially the officer who said that her eyes didn't need to be blindfolded, because nothing could happen to him. "My ties are strong" he said with confidence.[27]

6. In Istanbul, a sixteen year old girl was arrested together with two other girls in February 1997. While in police custody, all three were tortured. The police violently undressed them, then subjected them to torture including electric shocks, hanging by the arms, high pressure water hoses, and both verbal and physical sexual assault.

   The three young women reported the police officers to the prosecutor's office where legal proceedings were initiated and the trial is still pending. The girls' lawyers were only legally able to bring the charges of sexual violence under the heading "harassment". The accused officers were not detained while awaiting trial.[28]

7. A sixteen year old girl was arrested in Sirinevler, Istanbul and brought to the Anti-Terror Department of the police headquarters in Aksaray. Here, they took her into a room blindfolded and asked her if she had any connection to the PKK. When she said that she had no connection with the PKK, they began to beat her with their fists and administered electric shocks. When the girl again stated that she did not know anything about the PKK the officers took her into another room where they pushed a truncheon into her anus and continued to make verbal threats on her life.

   During the period of her imprisonment, which lasted for one and a half years, the

27 - Ibid., p. 76.
28 - Ibid., p. 15.

60

girl was twice raped with a truncheon, beaten, subjected to electric shocks, and mentally harassed. Throughout this time she was only allowed to see a doctor once. During this medical visit, the doctor examined the girl from a distance and wrote his report. As a policemen was also present during the medical examination, the young girl said nothing about the abuse.

She suffered from anal bleeding throughout her one and a half years in prison and ceased to menstruate.

When the girl was released she sought help at the Turkish Human Rights Foundation (THRF). Here, the doctor diagnosed a torn anus and she was operated on.

The rapes were reported to the Public Prosecutor's office in Faith, Istanbul on 24 September 1997. The prosecutor abandoned court proceedings on the grounds that it could not be proved that the serious physical and psychological injuries were the result of torture. However, in the files there were several reports, in which the medical certificates of the THRF assumed torture and rape as the cause for the anal fissures and for the psychological consequences.[29]

8. In January-February 1995, Remziye Dine (17 years old) in Sican Village, Kozluk, Batman, was reportedly raped by the village guard while being threatened with a firearm that she would be revealed as a PKK member. She later gave birth to a child, proved to be the child of the village guard.[30]

9. Emine Yasar (16 years old) was detained at the Istanbul General Security Directorate, Anti-terror Branch on suspicion of political offences. From 1 to 16 October 1995, her head was repeatedly banged against a wall, electric shocks were applied to her feet and fingers, she was subjected to threats, anal rape with a truncheon on three occasions and was forced to witness the rape of another woman. Following her release from prison in 1997 she underwent surgery for a torn rectum .

10. In February 1996, Y.K. (17 years old), detained in Manisa, reported that she was raped during seven days of incommunicado detention. She was also reportedly subjected to pressurized cold water; suspension; electric shocks to the fingers, sexual organs, stomach and mouth; being doused in cold and boiling

29 - Ibid., p. 40.

30 - E/CN.4/1999/61/Add.1, 27 January 1999, 30.

water; and having her head pushed inside a toilet bowl.[31]

11. On 8 February 1996, Sevgi Kaya (15 years old) at the Istanbul General Security Directorate, detained on suspicion of political offences, was reportedly subjected to blindfolding; beatings, including with truncheons; loud music; threats of rape; soaked with cold water; dragged by the hair; forced to strip naked; *falaka*; death threats; squeezing of breasts; suspension; cold water thrown on kidney area and exposed to fan, resulting in kidney infection; and beating on the hands.[32]

12. In September 1997, Sukran Aydin (17 years old), was held for 3 days at Derik gendarme headquarters, during which time she was reportedly raped, blindfolded, beaten, interrogated and forced to strip naked.[33]

13. On 6 March 1999, Fatma Deniz Polattas (19 years) was arrested by police and on 8 March N.C.S. (16 years) was arrested by police. Both were taken to the Anti-terror Branch of Iskenderum Headquarters on suspicion of being members of the PKK and were detained for 5 and 7 days respectively until 12 March 1999. N.C.S. was reportedly subjected to blindfolding; being forced to stand on her feet continuously; sleep deprivation; prevention from using the toilet; denial of food and drink except sour milk; loud music and marches; standing on a cold floor; being stripped and left naked; insults and threats to her life and that her mother would be sexually abused and raped; being beating; being forced to sit on a wet floor and to roll naked in water; suspension; and being exposed to pressurized cold water. Fatma Deniz Polattas was subjected to the same torture methods as N.C.S. She was also subjected to anal rape with a serrated object and threats that both her father and mother would be raped in front of her and that her father would be dismissed from his job.

On 2 November 1999, Fatma Deniz Polattas was sentenced to 18 years imprisonment. N.C.S. was sentenced to 12 years imprisonment. On 29 June 2000, the Appeal Court upheld their sentences, despite the fact that the convictions were

31 - "Torture and Ill-Treatment of Children in Turkish Police Stations", 1 November 2000, Human Rights Watch Children's Rights Division, 2-3.

32 - E/CN.4/1999/61/Add.1, 27 January 1999, 31.

33 - "Turkey, Its Human Rights Record and the Kurdish People", March 2000, Kurdistan Committee, Geneva, 16.

based on confessions allegedly obtained under torture. The four policemen who signed the girls' statements in police custody have been charged. The hearing has been adjourned to 12 April 2001.[34]
A trial opened on 21 March 2001 against 13 women and 3 men, including N.C.S.'s father, her lawyer Fatma Karakas, Fatma Polattas and women's activists for having "insulted the Turkish army and police" which carries sentences of 1 to 6 years' imprisonment. The charges arise from a conference organised in Istanbul called "No to sexual abuse and rape" on 10-11 June 2000 during which statements against rape and sexual abuse in custody were made.[35]

X. Conclusions and Recommendations

Although OMCT welcomes the current amendments to the Turkish Civil and Penal Code which should improve the status of women and girls in the country, it is gravely concerned by both the *de jure* and *de facto* situation of girls in Turkey.

OMCT is concerned by the difference that remains between the status of boys and girls and men and women. Under certain circumstances, it appears that discrimination persists regarding the legal age of marriage. Furthermore, OMCT expresses its concern over article 302 of the Civil Code which allows an unwed father to renounce his responsibilities towards his child on the grounds that the mother is not honourable. OMCT therefore recommends that the government abolish all discriminatory laws and amend its legislation to fix the same minimum age of marriage for both girls and boys. Moreover, OMCT recommends that measures be designed to change attitudes that perpetuate discriminatory practices and encourages dialogue in the drafting of the new Civil Code that will enable this instrument to enhance the status of women and girls in Turkey. In addition, OMCT requests that the Turkish government abolish article 302 of the Civil Code.

The correlation between a woman's sexuality and her family's honour creates a climate

34 - "Campaign Against Torture, women's action in Turkey", 20 February 2001, Medical team, Amnesty International.

35 - Ibid.

of social acceptance for extreme and violent measures to be taken in order to control the sexual behaviour of women and girls. The most concrete manifestations of this restrictive social code are crimes committed in the name of honour and practices such as virginity testing and forced marriages. Related to these practices is the extremely high rate of suicide among girls and women who justifiably fear retribution as a result of having transgressed social mores or who feel that they have no other choice if they wish to escape from a situation of forced marriage.

It should also be noted that the structure of the Turkish Criminal Code places women's sexuality under the control of the family. While other forms of violence are considered under the title "Felonies against individuals", rape and other forms of sexual violence are classified as "Felonies Against Public Decency and Family Order." Moreover, in this section, several articles refer to the virginity of victims as a constitutive element of the crime.

Although the Turkish Criminal Code does not explicitly provide for a defence based on honour, several provisions of the Code contain defences that are regularly used in order for the perpetrators of crimes committed in the name of honour to receive reduced sentences. Due to the general acceptance of honour-related crimes by Turkish society, honour is often used by judges as a mitigating factor.

In order to fulfil its duty to exercise "due diligence" in the prevention, investigation and punishment of violence against women and girls and to eradicate crimes committed in the name of honour and practices such a virginity testing and forced marriages, OMCT would urge the government of Turkey to repeal all laws that provide reduced sentences for crimes committed in the name of honour, to enforce existing laws on incitement and assistance to commit murder and persuasion to commit suicide, and to amend all provisions in the criminal code which refer to the virginity of a victim as an essential element of the crime. Virginity testing should be prohibited, both in private and in public establishments.

It is further recommended that the Turkish government provide training and awareness-raising programmes on the seriousness of "honour crimes." This training should be extended to all parts of the public sector, including law enforcement officials and the

judiciary. The police should be trained and educated to refrain from returning women and girls to their families when their lives are in danger. Furthermore, the government of Turkey should provide sufficient shelters and relief support for girls and women subjected to violence as well as inexpensive or free legal aid.

OMCT is gravely concerned by the reports that child prostitution, trafficking, and sale of women and children is widespread in Turkey and that there is a lack of effective legislation in place for the protection of prostitutes and trafficked women and girls in the country. By arresting, detaining and expelling these girls and women form the country, trafficked women and girls are treated as criminals rather than victims.

OMCT would urge the government of Turkey to stop treating trafficked women and girls as criminals and instead to protect them from further violence and facilitate their rehabilitation. OMCT calls for the government to completely prohibit the commercial sexual exploitation of children. The government must enact a series of measures to deal with the problem of trafficking, including raising awareness and understanding of the seriousness of the issue amongst government officials and amongst the general public. OMCT would also urge the government to increase its efforts in the area of bilateral and regional agreements with neighbouring counties to find solutions to end trafficking as Turkey is both a destination and transit country.

OMCT is concerned by the numerous cases received concerning state violence against girls. The investigation, prosecution and punishment of members of the police and security forces accused of torture or mistreatment is rare, despite the large number of allegations of torture. This has led to a climate of impunity which is a major factor in the continued systematic practice of torture in Turkey. Moreover, when women and girls have been the victims of sexual violence, they often do not complain out of shame and fear.

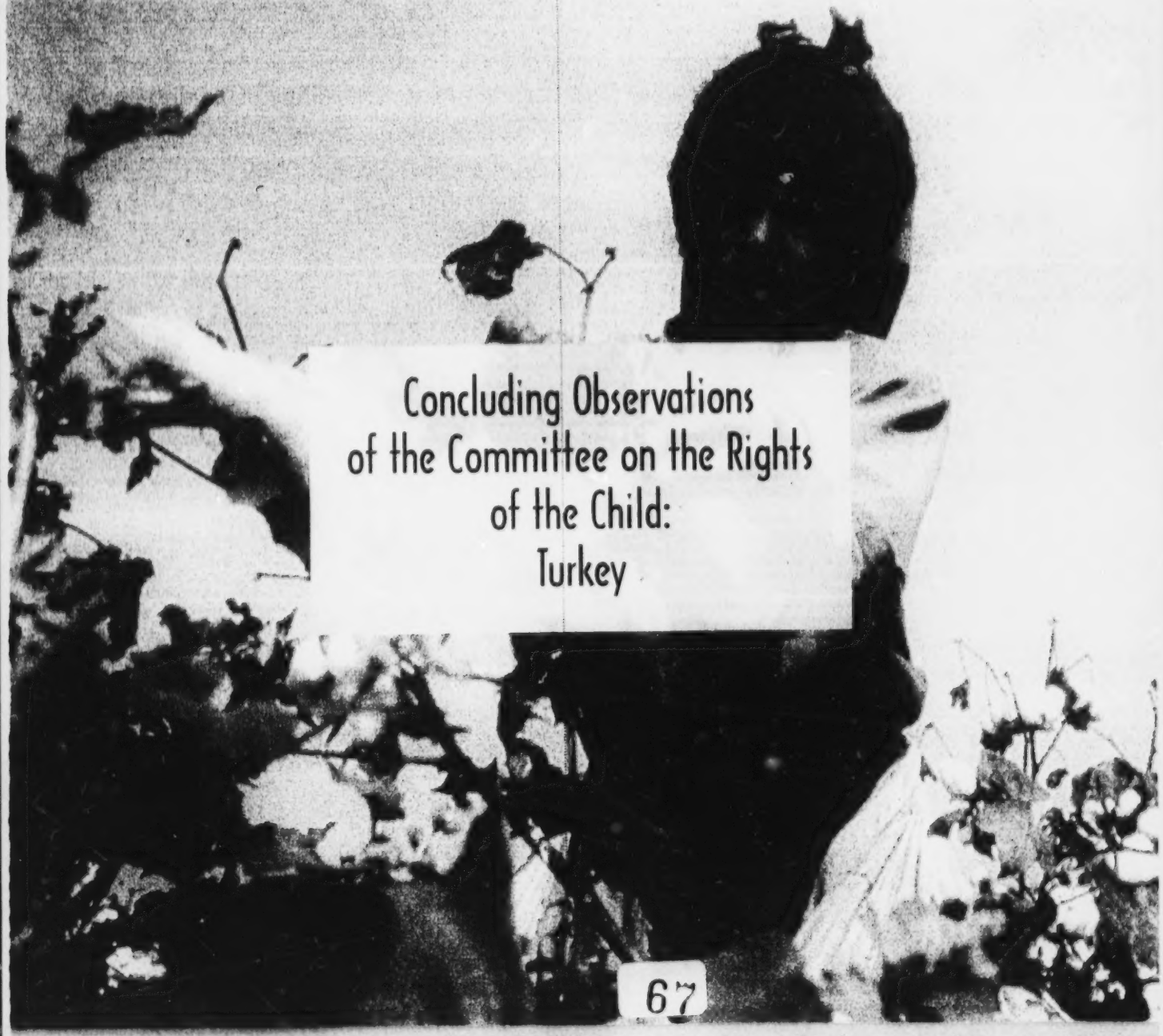
OMCT would urge the government to take all necessary measures to ensure that prosecutors and judges investigate all allegations of torture with due diligence. Any public official indicted for torture or ill-treatment must be suspended from duty, and if found guilty, the sentence must reflect the gravity of the crime.

OMCT would also request that the government ensure education for police and security personnel as well as the judiciary on measures designed to prevent, investigate, prosecute and punish gender-specific forms of torture, including rape and all other forms of sexual violence.

OMCT would ask that the government of Turkey submit gender-aggregated data and to highlight the measures that they have taken to stop violence against girls in police custody and detention.

Finally, OMCT would urge the government to ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in a timely manner, thereby enabling the Human Rights Committee and the Committee on the Elimination of All Forms of Discrimination Against Women to receive individual communications in relation to Turkey and to conduct inquiries into grave or systematic abuses of women's rights.

COMMITTEE ON THE RIGHTS OF THE CHILD
27th Session - Geneva, 21 May / 8 June 2001



Concluding Observations of the Committee on the Rights of the Child: Turkey

BEST COPY AVAILABLE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

1. The Committee considered the initial report of Turkey (CRC/C/51/Add.4), received on 7 July 1999 and additional information (CRC/C/51/Add.8) at its 701st and 702nd meetings (see CRC/C/SR. 701-702), held on 23 May 2001, and adopted at the 721st meeting, held on 8 June 2001, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's initial report, which follows the guidelines for reporting, the timely submission of the written replies to its list of issues (CRC/C/Q/TUR.1) and the provision of additional documentation. It notes with appreciation the large and multi-sectoral delegation sent by the State party which allowed the Committee to have a good assessment of the situation of the rights of the child in the State party.

B. Positive aspects

3. The Committee welcomes the on-going process to ensure that the State party's legislation is compatible with the provisions and principles of the Convention. In particular, it notes the preparation of a study to evaluate the conformity of the laws with the Convention and of an "Implementation Checklist for the Convention on the Rights of the Child" to monitor to what extent the provisions and principles of the Conventions have been implemented in Turkey.

4. The Committee notes with satisfaction the establishment of the Higher Council and the Sub-committee for Monitoring and Evaluating the Rights of the Child established under the Prime Ministry to coordinate the inter-sectoral planning for children. It further takes note that the General Directorate of the Social Services and Child Protection Agency (SHÇEK) coordinates the implementation of the Convention within the country.

5. The Committee welcomes the fact that the duration of compulsory education was increased to eight years and takes note of the government programme addressing high illiteracy among girls and women through the Girls Education Project in collaboration with UNICEF. Further, it notes with interest the Early Childhood Development Support Project whose aim is to give school preparation, health care and nutrition to children aged 5 and 6 who live in disadvantaged areas of major cities.

6. The Committee notes with satisfaction that the State party has ratified ILO Convention No. 138 on the Minimum Age for Employment and ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst forms of Child Labour. It also notes the signature in August 1999 of the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

7. The Committee notes with appreciation that the State party has launched in 1999 a Promotion Campaign on the Convention on the Rights of the Child under the coordination of the General Directorate of the Social Services and Child Protection Agency (SHÇEK) with the cooperation of the various Ministries and UNICEF to enhance the principles and provisions of the Convention. It further takes note of the organisation of a National Children's Congress in April 2000 with the participation of delegations of children from 81 provinces, civil society organisations, related public agencies and universities and of the convening in November 2000 of a Child Forum with the participation of children to review progress in the implementation of the National Children's Congress' conclusions and to assess the implementation of child's rights activities in the provinces.

8. The Committee acknowledges the multiple efforts undertaken by the State party after the two devastating earthquakes of 1999 to address children's issues by creating social services units to benefit children and by providing psycho-social support for children in schools based in the earthquake region.

9. The Committee notes with satisfaction that the State party's initial report was prepared by ad hoc committees comprising of representatives from public agencies, non governmental organisations, universities, as well as international organisations.

C. Factors and difficulties impeding progress in the implementation of the Convention

10. The Committee notes with concern that the State party is facing some difficulties in the implementation of the Convention, in particular due to the persistence of social and regional disparities in the country and the damaging effects provoked by the two devastating earthquakes of 17 August and 12 November 1999. The Committee further observes that the State party's narrow interpretation of the definition of minority is impeding for some groups the enjoyment of human rights protected under the Convention.

D. Principal areas of concern and recommendation

1. General measures of implementation

Reservations

11. The Committee notes with concern the reservations on articles 17, 29 and 30 of the Convention. It further notes that these reservations in some cases, in particular in the field of education, freedom of expression, and right to enjoy its own culture and use its own language, may have a negative impact on children belonging to ethnic groups which are not recognised as minorities under the Treaty of Lausanne of 1923, in particular children of Kurdish origin.

12. The Committee encourages the State party to consider withdrawing its reservations to articles 17, 29 and 30 of the Convention.

Legislation

13. The Committee takes note that part of the national legislation is currently under review, in particular the Civil Law, the Criminal Code and the Code of Criminal Procedure. It expresses nevertheless its concern that there is still a relevant part of legislation, such as the "Anti-terror Law" of 1991 and some provisions on juvenile courts, that is not in full conformity with the provisions and principles of the Convention.

14. The Committee recommends the State party to continue its efforts on law reform with a view to ensuring full conformity of

domestic legislation with the provisions and principles of the Convention and to take the necessary steps to end disparities between law and practice, in particular with reference to pre-trial detention of children.

Coordination

15. The Committee, while acknowledging the efforts made by the State party in improving the coordination by establishing the Higher Council and the Sub-committee for Monitoring and Evaluating the Rights of the Child, nevertheless takes note that the General Directorate of the Social Services and Child Protection Agency (SHÇEK), which is the coordinating agency for the implementation of the Convention and the secretariat for the Higher Council, was not provided with enough financial and human resources. It further expresses its concern at the high level of centralisation in the decision-making process and at the inadequate coordination within government agencies, both at the national and local levels, as well as between government agencies and the private and voluntary sectors.

16. The Committee recommends that the State party provide adequate human and financial resources in order to strengthen the coordination and make it more effective. It further encourages the State party to decentralise some aspects of the process of democratic decision-making, in particular with regard to health and education, in order to improve coordination also with the local authorities, and with the private and voluntary sectors, especially in the south-eastern region. Allocations of budgetary resources

17. The Committee, while noting that budgetary allocations for children have been increasing in recent years especially in the education and health sectors, expresses nevertheless its concern that the recent economical crisis and related structural adjustment policies could have a negative influence on such allocations. Further, it remains unclear to what extent the most vulnerable groups of children in particular benefit from the increase in the budgetary allocations for children.

18. In light of article 4 of the Convention, the Committee encourages the State party to identify clearly its priorities with respect to child rights issues in order to ensure that funds are allocated to the maximum extent of available resources for the implementa-

tion of the rights recognised in the Convention, including the economic, social and cultural rights of children, in particular to local governments and for children belonging to the most vulnerable groups in society. It further recommends that the State party take the necessary measures to identify the amount and proportion of the budget spent on children at the national and local levels, including the resources from international aid programmes, in order to adequately evaluate its impact on children.

Independent monitoring structures

19. The Committee expresses its concern at the absence of an independent mechanism, such as an Ombudsman or a Commission for Children, to monitor children's rights and to register and address individual complaints from children on violations of their rights under the Convention and takes note that there are on-going discussions on the establishment of an Office of the Ombudsman for Children.

20. The Committee encourages the State party to pursue its efforts with a view to developing and establishing an independent and effective mechanism, easily accessible for children and in accordance with the Paris Principles, to monitor the implementation of the Convention, to deal with complaints from children in a child-sensitive and expeditious manner and to provide remedies for violations of their rights under the Convention. In this regard, the Committee further recommends that the State party consider seeking technical assistance from, inter alia, UNICEF and the Office of the High Commissioner for Human Rights.

Data collection and analysis

21. The Committee notes with appreciation the measures taken by the State party, such as the establishment of a Child Information Network within the framework of the 1997-2000 Government of Turkey and UNICEF Master Plan of Operations and its continuation in the 2001-2005 period as the Child and Woman Information Network Project. It nevertheless expresses its concern at the absence of a unit within the State Institute of Statistics (SIS) responsible for the systematic collection of disaggregated data for all areas covered by the Convention and in relation to all groups of persons under 18 years of age.

22. The Committee recommends that the State party continue to develop a system of data collection and indicators consistent with the Convention and provide additional support to the Child Information Network. This system should cover all children up to the age of 18 years, with specific emphasis on those who are particularly vulnerable, including child victims of abuse, neglect, or ill-treatment; children with disabilities; children belonging to minorities and different ethnic groups; children who are internally displaced; children in conflict with the law; child asylum seekers; children who work; adopted children and children living in the streets and in rural areas. It further encourages the State party to use these indicators and data in the formulation of policies and programmes for the effective implementation of the Convention.

Dissemination of the Convention

23. While noting the number of initiatives carried out by the State party in order to disseminate the Convention within the country, the Committee is nevertheless concerned that the principles and provisions of the Convention are not yet disseminated at all levels of society and in particular in rural areas.

24. The Committee recommends that the State party promote the knowledge of the Convention at all levels, including administrative authorities and civil society, especially non-governmental organisations and the private sector, and develop more creative methods to disseminate the Convention, in particular through audiovisual aids such as picture books and posters, in particular at local level. The Committee also recommends adequate and systematic training and/or sensitisation of professional groups working with and for children, such as judges, lawyers, law enforcement personnel, teachers, school administrators and health personnel. The State party is encouraged to fully integrate the Convention into the curricula at all levels of the educational system.

2. Definition of the child

25. The Committee expresses its concern about the disparity between the minimum legal age for the marriage of boys (17 years) and that of girls (15 years) and notes that in the draft Civil Code the minimum legal age for marriage has been raised to 17 for both boys and girls. Further, it notes with concern

that there is not a clear minimum age for admission to employment and this could conflict with the age for the end of compulsory education, which is set at 15.

26. In light of article 1, 2 and other related provisions of the Convention, the Committee encourages the State party to pursue its efforts to review its legislation with a view to increasing the minimum age of marriage for girls to that for boys in order to bring it into full conformity with the provisions and principles of the Convention. It further recommends that the State party sets up an equal age for the time when compulsory education ends and the admission to employment begins.

3. General principles

General principles

27. The Committee is concerned that the principles of non-discrimination (art. 2 of the Convention), best interests of the child (art. 3) and respect for the views of the child (art. 12) are not fully reflected in the State party's legislation and administrative and judicial decisions, as well as in policies and practices relevant to children at both national and local levels.

28. The Committee recommends that the general principles of the Convention, in particular the provisions of articles 2, 3 and 12, be appropriately integrated in all relevant legislation concerning children, and applied in all political, judicial and administrative decisions, as well as in projects, programmes and services which have an impact on all children. These principles should guide planning and policy-making at every level, as well as actions taken by social and health welfare institutions, courts of law and administrative authorities.

Non-discrimination

29. The Committee is concerned that the principle of non-discrimination (art. 2 of the Convention) is not fully implemented for children belonging to minorities not recognised by the Treaty of Lausanne of 1923, in particular children of Kurdish origin; children with disabilities; children born out of wedlock; girls; refugee and asylum seeking children; children who are internally displaced and children living the south-eastern region and in rural areas,

especially with regard to their access to adequate health and educational facilities.

30. The Committee recommends that the State party take appropriate measures to prevent and combat discrimination. It further recommends the collection of appropriate disaggregated data to enable monitoring of discrimination against all children, in particular those belonging to the above-mentioned vulnerable groups, with a view to developing comprehensive strategies aimed at ending all forms of discrimination.

Right to life

31. The Committee is deeply concerned about the violation of the right to life, with reference to the practice of "honour killings", prevailing in particular in the eastern and south-eastern regions and among recent immigrants to cities, by which immediate family members kill women who are suspected of being unchaste, and notes that often both victims and perpetrators are minors.

32. In light of art.2 (non-discrimination), art. 3 (best interests of the child), art.6 (right to life) and art.19 (protection from all forms of violence) of the Convention and in line with the Commission on Human Rights resolution 2001/45, with the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions (EC/CN. 4/2001/9, paras.38-41) and with CEDAW.

Concluding observation (A/52/38/Rev.1, paras. 179 and 195), the Committee strongly recommends that the State party review rapidly legislation with a view to addressing these crimes in an effective way and to eliminating all provisions allowing reductions of sentence if the crime is committed for honour purposes.

It further recommends the development and the effective implementation of an awareness raising and education campaign, involving also religious and community leaders, to effectively combat discriminatory attitudes and harmful traditions affecting girls, in particular in the eastern and south-eastern regions, by demonstrating that such practices are socially and morally unacceptable. The State party should also provide special training and resources to law enforcement personnel with a view to protecting in a more effective way girls who are in danger

of "honour killing" and to prosecuting in an effective way these cases.

Respect for the views of the child

33. While noting a number of initiatives to improve participation of children such as the Children's Forum, the Committee is nevertheless concerned that general practices and policies in the country do not encourage the freedom of expression of children and notes that in practice, in the administrative and judicial procedure, often children's views are not heard even when this is provided for in the legislation.

34. In light of article 12 of the Convention, the Committee recommends that the State party seek to develop a systematic approach and policy, with the involvement of professionals working with children, in particular teachers and social services, and civil society, including community leaders and NGOs, to increase public awareness of the participatory rights of children and encourage respect for the views of the child within the family, schools, and generally in society. Further, it encourages the State party to recognise the right of children to have their views heard and taken into account in actions taken by social welfare institutions, courts of law and administrative authorities, also at local level.

4. Civil rights and freedoms

Birth registration

35. The Committee notes with concern that approximately twenty-five percent of children under 5 years of age in Turkey are not registered and that these rates are higher in the eastern and south-eastern regions, because parents are unaware of the importance of birth registration and/or have difficult access to registry offices, in particular in rural areas.

36. The Committee recommends that the State party develop more widespread awareness among the population, including through public information campaigns, of the importance of immediate birth registration and improve the registration system in order to reach all families with children, in particular in the eastern region.

Freedom of expression and association

37. The Committee takes note with concern that persons under 18 cannot join associations, including trade unions and non-governmental organisations. It is also noted with great concern that article 13 of the Turkish Civil Code of 1926 stating that children "shall not be entitled to exercise civil rights" does not conform with the Convention, especially its articles 12 to 17.

38. In light of article 13 and 15 of the Convention, the Committee recommends that the State party ensure that children can form, join and leave associations freely and, in particular, those who have the legal age for being employed can form, join and leave freely trade unions. It further encourages the State party to consider reviewing its legislation in order to guarantee to children their civil rights and freedoms in accordance with the Convention.

Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

39. The Committee is extremely concerned by the violation of the right of the child not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment appearing in the number of reported cases of torture and/or ill treatment of children, especially when placed in pre-trial detention.

It further notes that in a number of cases children are held incommunicado when in police or gendarma custody and are not allowed the presence of a lawyer, practices which can provide protection from torture and ill treatment, and are not interrogated in presence of a prosecutor, as established by law. It also notes with concern that alleged cases of torture against children are not always duly investigated and perpetrators convicted, thus creating a climate of impunity.

40. In light of article 37(a) of the Convention and in line with the Special Rapporteur on Torture's recommendations (E/CN.4/1999/61/Add.1), the Committee strongly recommends that the State party enforce, or, when appropriate, review existing legislation, with a view to preventing that children are held incommunicado, and investigate in an effective way reported cases of torture and ill treatment of children. It further recommends that alleged perpetrators be, as

appropriate, transferred from active duty or suspended while they are under investigation, and released if convicted. It invites the State party to continue with the systematic training of law enforcement personnel on child rights issues. In light of article 39, the Committee also invites the State party to take all appropriate measures to ensure physical and psychological recovery and social reintegration for child victims of torture and/or ill treatment.

5. Family environment and alternative care

Parental responsibilities

41. While taking note of the recent establishment of Family Consultation Centres in a number of cities as a positive step, the Committee is nevertheless concerned that there is no appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities, in particular concerning female headed families.

42. The Committee encourages the State party to undertake effective measures to improve social assistance to families, including through counselling and community-based programmes, and to fully enforce the Programme of Cooperation with UNICEF on enhancing family capacity, in order also to reduce the number of children in institutional care.

Children deprived of family environment

43. The Committee is concerned at the high number of children who live in institutions, half of whom are placed there because of socio-economic problems affecting their families. It further notes with concern that these institutions are in some cases in bad physical state and need adequately trained and competent staff and, therefore, recognises with appreciation the reorganisation of some of these institutions into family units of small groups of children. It also notes that the foster care system is not enough developed and that the law on adoption is too restrictive.

44. The Committee recommends that the State party review the system of institutionalisation of children as well as ensure, in light of article 25 of the Convention, the periodic review of children placed in institutions. Further it recommends that the State party allocate more financial and human

resources to improve the situation of children living in institutions. In light of article 20 of the Convention, it encourages the State party to promote alternative care and further improve the quantity, quality and efficiency of the foster care, including by providing sufficient financial support. Further, in light of article 21, it encourages the State party to review the law on adoptions with a view to facilitating the adoption process.

Child abuse and neglect

45. The Committee expresses its concern about the lack of data, appropriate measures, mechanisms and resources to prevent and combat domestic violence, ill-treatment and abuse, including child sexual abuse and related virginity tests. If further notes that societal attitudes against women and children often prevent the reporting of these cases and, when reported, police does not systematically intervene. The limited number of services for abused children is also a cause of concern.

46. In light of article 19 of the Convention, the Committee recommends that the State party undertake studies on domestic violence, ill-treatment and abuse, including sexual abuse, to enable it to understand the extent, scope and nature of these practices, adopt adequate measures and policies, and contribute to changing attitudes. The Committee also recommends that cases of domestic violence and ill-treatment and abuse of children, including sexual abuse within the family, be properly investigated within a child-sensitive inquiry and judicial procedure in order to ensure better protection of child victims, including the protection of their right to privacy, and the elimination of virginity tests. Measures should also be taken to provide support services to children in legal proceedings, and for the physical and psychological recovery and social reintegration of the victims of rape, abuse, neglect, ill-treatment and violence, in accordance with article 39 of the Convention.

Corporal Punishment

47. The Committee expresses its deep concern that physical punishment in the home is culturally and legally accepted and that only "excessive punishment" resulting in physical injury is prohibited by the Penal Code. It further notes with concern that, although prohibited, corporal

punishment is used also in school and other institutions.

48. In light of articles 3, 19, and 28(2) of the Convention, the Committee encourages the State party to develop measures to raise awareness on the harmful effects of corporal punishment and engage in the promotion of alternative forms of discipline in families to be administered in a manner consistent with the child's dignity and in conformity with the Convention. It also recommends the effective enforcement of the ban on corporal punishments in school and other institutions.

6. Basic health and welfare

Children with disabilities

49. While noting as a positive development the establishment of the Administration of the Disabled as a coordinating agency of services and the removal of some structural obstacles in education, employment and rehabilitation, the Committee remains concerned about the huge number of children with disabilities who are institutionalised and the general lack of resources and specialised staff for these children. 50. The Committee recommends that the State party undertake measures to ensure that the situation of children with disabilities is adequately monitored in order to effectively assess their situation and needs. It further recommends that the State party allocate the necessary resources for programmes and facilities for all children with disabilities, especially the ones living in rural areas, and develop community-based programmes in order for the children to be able to stay at home with their families. In light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee's recommendations adopted at its day of general discussion on "The rights of children with disabilities" (see CRC/C/69), it is also recommended that the State further encourage their inclusion into society and integration into the regular educational system, including by providing special training to teachers and by making schools more accessible.

Health and health services

51. While noting with appreciation that the State party adopted the Integrated

Management of Childhood Illnesses (IMCI) and established 35 new Social Service provincial directorates in 2000, and that protocols for cooperation were signed between Social Services and Child Protection Agencies and non-governmental organisation in order improve services for children at local level, the Committee is nevertheless concerned that the situation of maternal, child and reproductive health is still poor and that there are great disparities in terms of geographic regions and socio-economic classes. It notes in particular that infant, child and maternal mortality rates, as well as malnutrition rates, are particularly high in rural areas of the south-eastern regions and in poor urban areas. The Committee also takes note that the immunisation programme does not cover all children in Turkey and that immunisation rates are particularly low in the eastern regions.

52. The Committee recommends that the State party allocate appropriate resources and develop comprehensive policies and programmes to improve the health situation of all children without discrimination, in particular by focusing more on primary care level and decentralising the health care system. In particular, to prevent child mortality and morbidity, it recommends the provision of adequate antenatal and postnatal health care services and the development of campaigns to inform parents on basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation, and the prevention of accidents. With reference to the immunisation programme, the Committee encourages the State party to look to international cooperation for the full and efficient implementation of the immunisation programme.

Adolescent health

53. The Committee expresses its concern regarding the high rates of early pregnancy, the rise in the number of children and youths using tobacco and drugs, the increase in cases of sexually transmitted diseases (STDs), in particular syphilis, and the growing numbers of cases of HIV/AIDS among youths.

Further, it notes the limited availability of programmes and services in the area of adolescent health, including mental health, in particular treatment and rehabilitation programmes for drugs addiction. It also notes

the lack of sufficient prevention and information programmes, especially on reproductive health, in schools.

54. The Committee recommends that the State party increase its efforts to promote adolescent health, including mental health, policies particularly with respect to reproductive health and substance abuse consumption and strengthen the programme for health education in schools. The Committee further suggests that a comprehensive and multidisciplinary study be undertaken to understand the scope of adolescent health problems, including the negative impact of STDs and HIV/AIDS, in order to be able to develop adequate policies and programmes. It is also recommended that the State party undertake further measures, including the allocation of adequate human and financial resources, to evaluate the effectiveness of training programmes in health education, in particular as regards reproductive health, and to develop youth-sensitive counselling, care and rehabilitation facilities that are accessible, without parental consent, when this is in the best interests of the child.

7. Education, leisure and cultural activities

Education

55. The Committee notes with concern the high drop-out rates among girls, in particular the ones living in rural areas, after third grade; the decrease in the quality of education and the insufficient participatory teaching methods; the lack of trained personnel and insufficient infrastructure, especially classrooms, in particular in large metropolitan areas and in the south-east.

56. In light of article 28 of the Convention, the Committee recommends that the State party undertake appropriate measures to ensure regular attendance at schools and the reduction of drop-out rates, in particular among girls. It encourages the State party to continue its efforts to introduce pre-school education and to take further steps to ensure the enrolment of children in secondary schools. It also encourages the State party to continue to strengthen the teacher training programme in order to increase the number of trained teachers and improve the quality of teaching and to address education towards the aims mentioned in art. 29(1)

of the Convention and the Committee's General Comments on the Aims of Education.

8. Special protection measures

Refugee children

57. The Committee notes with concern that only asylum seekers from European countries are granted the refugee status, thus child asylum seekers of non-European origin, who represent the majority, can be granted asylum only on a temporary basis until they find a third country and, therefore, do not always have access to education and health. It notes that personnel dealing with child asylum seekers and refugees does not have training on child rights issues, in particular on how to deal with children who are unaccompanied and in cases of family reunification, as well as with children who come from areas affected by war and who may have been victims of traumatic experiences.

58. The Committee encourages the State party to consider withdrawing the geographical limitation on the 1951 Convention relating to the Status of Refugees and its 1967 Protocol in order to allow non-European child refugees to be granted refugee status. Further it recommends that the State party provide adequate training of the officials who deal with child asylum seekers and refugees, in particular in child-interviewing techniques and on how to ensure family reunification. Also, in accordance with the UNHCR Guidelines on Protection and Care of Refugee Children, it recommends that the State party ensure that every effort is made to identify children who require special support upon their arrival in the State party, as well as consider providing adequate psychological assistance to them. It is further recommended to strengthen measures to allow full access to education to all child asylum seekers and refugee children.

Internally displaced children

59. The Committee expresses its concern at the high number of internally displaced children in Turkey, who were forced to leave their home towns in the 1990s owing to the high level of violence in the south-east region. The Committee is also concerned about their limited access to housing, health services and education.

60. In line with the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), the Committee recommends that the State party ensure that internally displaced children and their families have access to appropriate health and education services and adequate housing. Further, it invites the State party to collect data and statistics in order to know how many children are displaced and what their needs are with a view to developing adequate policies and programmes.

Economic exploitation

61. The Committee takes note of the number of protocols the State party has signed with ILO, in particular the one for the promotion of education of working children. It however expresses its concern that there is not a clear legal minimum age for working children and notes, in this regard, the commission established under the Working Children Department of the Ministry of Labour and Social Security to prepare a draft "Law about the minimum age for work and protective measures for working children" which will cover all children who work. It nevertheless remains worried about the high number of children engaged in labour activities, in particular children working in the field, domestic workers, children working in small enterprises and children working in the street, who appear to be less protected by legislation.

62. The Committee recommends that the State party continue to undertake measures to prevent and combat all forms of economic exploitation of children, including commercial sexual exploitation. Children living in the streets.

63. The Committee, while noting that a number of centres were established with the collaboration of non governmental organisations to provide counselling, training and rehabilitation services, expresses nevertheless its concern at the significant number of children living in the streets and notes that assistance provided to them is generally only supplied by non-governmental organisations.

64. The Committee recommends that the State party support existing mechanisms to ensure that children living in the streets are provided with adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full

development. Moreover, the State party should ensure that these children are provided with rehabilitation services for physical, sexual and substance abuse; protection from police brutality; and services for reconciliation with families.

Juvenile justice

65. The Committee notes as positive development the amendment proposed to extend the competence of juvenile courts from 15 to 18 years of age and the study started by the Ministry of Justice to harmonise the "Law about the formation, duties and procedure of the Juvenile Courts" with the provisions of the Convention, as well as the establishment of units for child protection within the Security Directorates in every province and sub-district. However, it remains deeply concerned at the major discrepancies between domestic legislation concerning juvenile justice and the principles and provisions of the Convention.

In particular it notes with concern that the minimum legal age for criminal responsibility is 11 and that the Juvenile Courts Law covers children only between the ages of 11 to 14, while children between 15 and 18 are subject to the Penal Law. Further, it also notes with concern that even children from 11 to 14 may not be subject to the Juvenile Courts Law if they are accused of having committed a crime falling under the jurisdiction of State Security Courts or Military Courts or if they live in areas under State of emergency. The fact that detention is not used as a measure of last resort and that there have been reported cases of children held incommunicado for long periods is noted with deep concern. The Committee is also concerned that there is only a small number of Juvenile Courts and none of them are based in the eastern part of the country. Concern is also expressed at the long periods of pre-trial detention and the poor conditions of imprisonment and at the fact that insufficient education, rehabilitation and reintegration programmes are provided during the detention period.

66. The Committee recommends that the State party continue reviewing the law and practices regarding the juvenile justice system in order to bring it in full compliance with the Convention, in particular articles 37, 40 and 39, as well as with other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile

Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), with a view to raising the minimum legal age for criminal responsibility, to extending the protection guaranteed by the Juvenile Law Court to all children up to the age of 18 and to enforcing this law effectively by establishing juvenile courts in every province. In particular, it reminds the State party that juvenile offenders should be dealt with without delay, in order to avoid incommunicado periods of detention, and that pre-trial detention should be used only as a measure of last resort, should be as short as possible and should be no longer than the period prescribed by law. Alternative measures to prevent pre-trial detention should be used whenever possible.

67. With reference to children deprived of liberty, the Committee recommends that the State party incorporate into its legislation and practices the provisions of United Nations Rules for the Protection of Juveniles Deprived of Liberty, in particular to guarantee them access to effective complaints procedures covering all aspects of their treatment, and take appropriate rehabilitative measures to promote the social reintegration of the children involved in the juvenile justice system. Finally, the Committee recommends that the State party seek assistance from, inter alia, the Office of the High Commissioner for Human Rights, the United Nations Centre for International Crime Prevention, the International Network on Juvenile Justice, and UNICEF through the United Nations Coordination Panel on Technical Advice and Assistance on Juvenile Justice.

Optional protocols

68. The Committee encourages the State party to ratify the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the one on the involvement of children in armed conflict.

9. Dissemination of Documents from the Reporting Process

69. Finally, the Committee recommends that, in light of article 44, paragraph 6, of the Convention, the initial report and written replies presented by the State party be made widely available to the public at large and

that the publication of the report be considered, along with the relevant summary records and the concluding observations adopted thereon by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government and the general public, including NGOs and children.

The World Organisation Against Torture (OMCT) wishes to extend its gratitude for its support to the Children's Programme to:

BISCHÖFLICHES HILFSWERK
MISEREOR E.V.
MISEREOR
AKTION GEGEN HUNGER
UND KRANKHEIT
IN DER WELT

FONDATION
DE
FRANCE

OMC
OPERATING THE NETWORK

P.O. Box 21 - 8, rue du Vieux-Billard
CH 1211 Geneva 8
Tel. +4122-809 49 39 - Fax +4122-809 49 29
http:// www.omct.org - Electronic Mail: omct@omct.org